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CUMULATIVE POCKET SUPPLEMENT

IDAHO CODE

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Idaho Code Commission

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COMMISSIONERS

TITLES 50-53

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PUBLISHER'S NOTE

Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports
Pacific Reporter, 3rd Series
Federal Supplement, 2nd Series
Federal Reporter, 3rd Series
United States Supreme Court Reports, Lawyers' Edition, 2nd Series

Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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USER'S GUIDE

To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.

ADJOURNMENT DATES OF SESSIONS OF LEGISLATURE

Year	Adjournment Date
2010	March 29, 2010
2011	April 7, 2011
2012	March 29, 2012
2013	April 4, 2013
2014	March 20, 2014

TITLE 50

MUNICIPAL CORPORATIONS

CHAPTER 2

GENERAL PROVISIONS — GOVERNMENT — TERRITORY

50-206. Removal of appointive officers.

JUDICIAL DECISIONS

At-Will Employees.

A city clerk is an appointive officer who is an at-will employee who may be removed without notice or a hearing. A municipality does not alter that status by adopting a personnel manual, outlining hiring and termination procedures. Boudreau v. City of Wendell, 147 Idaho 609, 213 P.3d 394 (2009).

50-209. Powers of policemen.

JUDICIAL DECISIONS

Fresh Pursuit.

The only evidence necessary to show fresh pursuit is that the officer had knowledge that a crime or infraction was committed within his jurisdiction and that the officer pursued the suspect beyond the jurisdiction with the purpose of making an arrest, citing the suspect, or investigating the offense. Whether the officer's lights are flashing and siren is blaring is objective evidence of the officer's pursuit, but it is not necessary. It is well within an officer's discretion to wait for a safe point to stop a vehicle. State v. Scott, 150 Idaho 123, 244 P.3d 622 (Ct. App. 2010).

50-219. Damage claims.

JUDICIAL DECISIONS

Analysis

Notice of claim.
Statute of limitations.

Notice of Claim.

Where developer did not file notice of a claim of unjust enrichment against a city, regarding construction of a water supply line to a new subdivision, until almost one year after he had completed the construction, his

claim was not timely under § 6-906 and this section. Scott Beckstead Real Estate Co. v. City of Preston, 147 Idaho 852, 216 P.3d 141 (2009).

Fire chief's claim for breach of contract was dismissed because that claim was subject to the notice requirement under this section; neither the fire chief's demand letters providing written notice of his whistleblower claim nor his initial complaint met the notice requirements of §§ 6-906 and this section. Brown v. City of Caldwell, 769 F. Supp. 2d 1256 (D. Idaho 2011).

Statute of Limitations.

In an action for additional fees, the time limit in § 6-906 began to run, not when the construction performance manager performed his additional services, but when the city denied the manager's fee request for those services. City of Meridian v. Petra Inc., 154 Idaho 425, 299 P.3d 232 (2013).

District court did not err when it dismissed the property owner's state claims for unlawful taking, as they were time-barred by § 6-908, because they were filed more than 180 days after their cause of action accrued. Alpine Vill. Co. v. City of McCall, 154 Idaho 930, 303 P.3d 617 (2013).

Cited in: Hehr v. City of McCall, — Idaho —, 305 P.3d 536 (2013).

50-222. Annexation by cities.

JUDICIAL DECISIONS

ANALYSIS

Annexation.
Judicial review.
Validity of annexation.

Annexation.

City's argument that a property owner's action to have an annexation agreement declared unenforceable because it was not pursued at the "earliest practicable time" and was, therefore, barred under subsection (6) of this section lacked merit; the "earliest practicable time" language is not intended to restrict the party's right. Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.), 488 B.R. 130 (Bankr. D. Idaho 2012).

Judicial Review.

Under § 50-222, judicial review is not authorized for category A annexations. In re City of Shelley, 151 Idaho 289, 255 P.3d 1175 (2011).

City ordinance annexing a subdivision pursuant to category A was based on substantial evidence where the city produced a surveyed map showing the subdivision was contiguous to existing city property, and established that the subdivision had been using city water system for many years, thereby impliedly consenting to annexation. In re City of Shelley, 151 Idaho 289, 255 P.3d 1175 (2011).

Court was not precluded from reviewing the terms of an annexation agreement between a city and a property owner. Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.), 488 B.R. 130 (Bankr. D. Idaho 2012).

Validity of Annexation.

Property owner's obligation in an annexation agreement to pay a fee unquestionably in excess of that required to compensate the city for actual costs resulting from the annexation was unenforceable because nothing in the grant of power to cities under subsection (1) of this section authorized the city to condition annexation upon payment by the owner of more than its equitable share of the costs to be incurred by the city in annexing the property. Old Cutters, Inc. v. City of Hailey (In re Old Cutters, Inc.), 488 B.R. 130 (Bankr. D. Idaho 2012).

CHAPTER 3

POWERS

50-308. Maintenance of peace — Licensing and regulating amusements. — Cities shall have power: to prevent and restrain riots,

routs, noises, disturbances or disorderly assemblies; to arrest, regulate, punish, fine or set at work on the streets or elsewhere, vagrants or persons found without visible means of support or legitimate business; license and regulate theaters, halls, concerts, dances, theatrics, circuses, carnivals, exhibitions, amusements and other performances, where an admission fee may or may not be charged.

History.
1967, ch. 429, § 32, p. 1249; am. 2013, ch. 223, § 1, p. 524.

STATUTORY NOTES

Cross References.
Preemption by state of firearms regulation, § 18-3302J.

Amendments.
The 2013 amendment, by ch. 223, deleted "to regulate, prevent and punish for the carrying of concealed weapons" following "disorderly assemblies."

50-320. Cemeteries.

JUDICIAL DECISIONS

Cited in: Alliance v. City of Idaho Falls, 742 F.3d 1100 (9th Cir. Dec. 31, 2013).

50-334. Abatement of nuisances. — Cities are empowered to declare what shall be deemed nuisances, to prevent, remove and abate nuisances at the expense of the parties creating, causing, committing or maintaining the same, to levy a special assessment as provided in section 50-1008, Idaho Code, on the land or premises whereon the nuisance is situated to defray the cost or to reimburse the city for the cost of abating the same, and this power shall extend three (3) miles beyond the city limits, provided however, that the expense of declaring, preventing, removing and abating nuisances outside the city limits shall rest with the city when the nuisance comes within the three (3) mile area by reason of expansion of city boundaries.

History.
1967, ch. 429, § 60, p. 1249; am. 1967, ch. 431, § 1, p. 1417; am. 2010, ch. 79, § 18, p. 133.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 79, updated the section reference.

50-336. Traffic safety education program — Fees. — (1) Cities may by ordinance elect to offer a traffic safety education program to all drivers issued an infraction citation by a city law enforcement officer for a moving violation not involving a collision. Citations allowing the traffic safety education program alternative shall only be issued pursuant to section 49-1501, Idaho Code, and as permitted by this section. Such traffic safety education program shall be for the purpose of educating drivers in traffic

safety concepts. Drivers qualified under this section who desire to pay the fixed penalty and court costs in lieu of appearing in court on the citation may also elect to attend a traffic safety education program offered by a city under this section as an alternative to receiving violation points and insurance rating charges as provided in subsection (6) of this section. At the time of issuance of the citation, drivers shall elect whether they wish to attend the program and, if so, the citing officer shall record the election in the uniform citation. The citing officer shall provide to the driver a written notice of the available times, locations and the cost of the program or a written notice identifying a telephone number or internet website address where such information can be obtained. The driver shall have forty-five (45) days from the date of issuance of the citation to complete the traffic safety education program. A driver electing to attend the program shall pay the fixed penalty and court costs for the citation to the clerk of the court as provided in the citation and pay the program fee, if any, separately to the city at or before the time of attendance at the program. Any person who fails to complete the offered traffic safety education program within the forty-five (45) days after voluntarily electing to attend will not receive the relief provided in subsection (6) of this section. Before issuing a citation allowing the traffic safety education program alternative, the citing officer shall ensure that the driver is not disqualified under subsection (2) of this section.

(2) The traffic safety education program option allowed under subsection (1) of this section is not available to:

(a) Any driver holding a commercial driver's license or any person driving a commercial motor vehicle; or

(b) Any driver having received within the last three (3) years relief from violation points under subsection (6) of this section or having received a point reduction as provided in rules of the Idaho department of transportation for completing any defensive driving or driver safety course.

(3) If the city imposes a traffic safety education program fee, such fee shall not exceed twenty-five dollars ($25.00).

(4) If the city collects a program fee from a driver disqualified from the traffic safety education program alternative, the city shall refund the program fee to the driver no later than ten (10) days following the discovery of the error. If the driver has already completed the program, the city shall, no later than ten (10) days following the discovery of the error, so notify the clerk of the court and the driver and shall advise the driver that the relief provided in subsection (6) of this section is not available and shall pay to the driver twenty-five dollars ($25.00) as liquidated damages for the error, in addition to refunding the program fee.

(5) The city clerk or other authorized city official for the city in which the citation was issued shall within fifteen (15) days of the completion of the traffic safety education program by the cited driver transmit verification of the completion to the clerk of the county in which the citation was issued.

(6) When a person has successfully completed a traffic safety education program for an infraction citation, the infraction shall not result in violation point counts as prescribed in section 49-326, Idaho Code, nor shall the infraction be deemed to be a moving violation for the purpose of establishing rates of motor vehicle insurance charged by a casualty insurer.

(7) The Idaho supreme court shall establish such rules as deemed necessary to implement the provisions of this section.

History.
I.C., § 50-336, as added by 2013, ch. 292, § 1, p. 769.

STATUTORY NOTES

Effective Dates.
Section 2 of S.L. 2013, ch. 292 provided: "This act shall be in full force and effect on and after January 1, 2014."

CHAPTER 4
MUNICIPAL ELECTIONS

50-410. Time and manner of filing declarations. — (1) All declarations of candidacy for elective city offices shall be filed with the clerk of the respective city wherein the elections are to be held not earlier than 8:00 a.m. on the eleventh Monday nor later than 5:00 p.m. on the ninth Friday, immediately preceding election day. Before a candidate files a petition of candidacy with the city clerk, the petition signatures shall be verified by the county clerk in the manner described in section 34-1807, Idaho Code, except that the city clerk shall stand in place of the secretary of state. Before any declaration of candidacy and filing fee or petition of candidacy mentioned in section 50-407, Idaho Code, can be filed, the city clerk shall ascertain that it conforms to the provisions of chapter 4, title 50, Idaho Code. The city clerk shall not accept any declarations of candidacy after 5:00 p.m. on the ninth Friday immediately preceding election day. Write-in candidates shall be governed by section 34-702A, Idaho Code, but shall file the declarations required in that section with the city clerk.

(2) A person shall not be permitted to file a declaration of candidacy for more than one (1) office in any city election.

History.
I.C., § 50-432, as added by 1978, ch. 329, § 2, p. 825; am. 1989, ch. 64, § 6, p. 101; am. 1996, ch. 337, § 1, p. 1137; am. 1998, ch. 240, § 3, p. 797; am. 2002, ch. 75, § 10, p. 164; am. 2006, ch. 105, § 4, p. 288; am. and redesig. 2009, ch. 341, § 110, p. 993; am. 2014, ch. 162, § 5, p. 455.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 162, added the subsection (1) designation and added subsection (2).

50-412. Canvassing votes — Determining results of election. — The county commissioners, within ten (10) days following any election, shall meet for the purpose of canvassing the results of the election. Upon receipt

of tabulation of votes prepared by the election judges and clerks, and the canvass as herein provided, the results of both shall be entered in the minutes of city council proceedings. Results of election shall be determined as follows: in the case of a single office to be filled, the candidate with the highest number of votes shall be declared elected; in the case where more than one (1) office is to be filled, that number of candidates receiving the highest number of votes, equal to the number of offices to be filled, shall be declared elected.

History.
I.C., § 50-467, as added by 1978, ch. 329, § 2, p. 825; am. and redesig. 2009, ch. 341, § 113, p. 993; am. 2014, ch. 162, § 6, p. 455.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 162, in the second sentence, substituted "receipt" for "acceptance" and deleted "and proclaimed as final" from the end.

50-414. Failure to qualify creates vacancy.

JUDICIAL DECISIONS

Vacancies.
Under this section, the positions of mayor and city councilman did not become vacant when the voter registrations of the candidates were cancelled, after they had been sworn into office; failure to remain eligible for the office does not automatically create a vacancy. City of Huetter v. Keene, 150 Idaho 13, 244 P.3d 157 (2010).

50-415. Certificates of elections.

JUDICIAL DECISIONS

Cited in: City of Huetter v. Keene, 150 Idaho 13, 244 P.3d 157 (2010).

50-420. Application of campaign reporting law to elections in certain cities. — The provisions of sections 67-6601 through 67-6616 and 67-6623 through 67-6630, Idaho Code, are hereby made applicable to all elections for mayor, councilman and citywide measures, including citywide recalls, in cities of five thousand (5,000) or more population, except that the city clerk shall stand in place of the secretary of state, and the city attorney shall stand in place of the attorney general.

History.
I.C., § 50-477, as added by 1982, ch. 229, § 1, p. 606; am. 2004, ch. 14, § 1, p. 11; am. 2004, ch. 177, § 1, p. 559; am. 2005, ch. 254, § 5, p. 777; am. 2007, ch. 202, § 16, p. 620; am. and redesig. 2009, ch. 341, § 122, p. 993; am. 2012, ch. 162, § 2, p. 437.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 162, inserted "including citywide recalls" near the middle of the section.

50-460. Assistance to voter. [Repealed.]

Repealed by S.L. 2009, ch. 341, § 112, effective January 1, 2011.

History.
I.C., § 50-460, as added by 1978, ch. 329, § 2, p. 825; am. 1985, ch. 83, § 10, p. 157; am. 2010, ch. 235, § 36, p. 542.

CHAPTER 5

INITIATIVE — REFERENDUM — RECALL

SECTION.
50-501. Initiative and referendum.

50-501. Initiative and referendum. — The city council of each city shall provide by ordinance for direct legislation by the people through the initiative and referendum. Minimum requirements of the ordinance adopted shall be as follows:

(1) Petitioners for initiative or referendum shall be equal to twenty percent (20%) of the total number of electors who cast votes at the last general election in the city;

(2) Petitions for referendum shall be filed not less than sixty (60) days following the final adoption of the ordinance to be subject to referendum;

(3) A special election for initiative or referendum shall be provided as prescribed in section 34-106, Idaho Code;

(4) Requirements for signature, verification of valid petitions, printing of petition, and time limits, except as expressly modified herein, shall be as nearly as practicable as provided in chapter 18, title 34, Idaho Code. This section does not apply to bond elections.

History.
I.C., § 50-501, as added by 1977, ch. 144, § 2, p. 320; am. 1978, ch. 343, § 1, p. 882; am. 1993, ch. 313, § 14, p. 1157; am. 1997, ch. 352, § 1, p. 1041; am. 2013, ch. 135, § 12, p. 307.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 135, substituted "chapter 18, title 34" for "sections 34-1701 through 34-1705" in subsection (4).

Effective Dates.
Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

CHAPTER 6

MAYOR

50-601. Qualifications.

JUDICIAL DECISIONS

Cited in: City of Huetter v. Keene, 150 Idaho 13, 244 P.3d 157 (2010).

CHAPTER 7

COUNCIL

50-702. Qualification of councilmen — Terms — Installation.

JUDICIAL DECISIONS

Cited in: City of Huetter v. Keene, 150 Idaho 13, 244 P.3d 157 (2010).

CHAPTER 10

FINANCES

50-1026. City bonds — Ordinance — Election. — Whenever the city council of a city shall deem it advisable to issue the coupon bonds of such city, the mayor and council shall provide therefor by ordinance, which shall specify and set forth all the purposes, objects, matters and things required by section 57-203, Idaho Code, and make provision for the collection of an annual tax sufficient to pay the interest on such proposed bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof within thirty (30) years from the time of contracting the same as required by the constitution and laws of the state of Idaho.

The ordinance shall also provide the date for holding an election that is in accordance with the dates authorized in section 50-405, Idaho Code, which falls more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held. Notice shall be given in the official newspaper of the city by the county clerk in accordance with election law in title 34, Idaho Code. Such election shall be conducted as other city elections. The voting at such elections must be by ballot, and the ballot used shall be substantially as follows: "In favor of issuing bonds to the amount of .... dollars for the purpose stated in Ordinance No. ...." and "Against issuing bonds to the amount of .... dollars for the purpose stated in Ordinance No. ...." If at such election, held as provided in this chapter, two-thirds (2/3) of the qualified electors voting at such election assent to the issuing of such bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, such bonds shall be issued in the manner provided by the laws of the state of Idaho.

History.
1967, ch. 429, § 186, p. 1249; am. 1971, ch. 25, § 7, p. 61; am. 2009, ch. 341, § 127, p. 993; am. 2011, ch. 11, § 25, p. 24.

STATUTORY NOTES

Compiler's Notes.

The 2011 amendment, by ch. 11, divided the first former sentence of the second paragraph into two sentences, inserting "falls more than forty-five (45) days after the clerk of the political subdivision orders that such election shall be held" as the end of the present first sentence.

Effective Dates.

Section 27 of S.L. 2011, ch. 11 declared an emergency retroactively to January 1, 2011 and approved February 23, 2011.

50-1027. Revenue bonds — Short title.

JUDICIAL DECISIONS

Cited in: Alliance v. City of Idaho Falls, 742 F.3d 1100 (9th Cir. Dec. 31, 2013).

50-1029. Definitions. — For the purpose of this act, unless a different meaning clearly appears from the context, the following terms shall be ascribed the following meanings:

(a) The term "works" shall include water systems, drainage systems, sewerage systems, recreation facilities, off-street parking facilities, airport facilities and air navigation facilities, electric systems or any of them as herein defined;

(b) The term "water system" shall include reservoirs, storage facilities, water mains, conduits, aqueducts, pipelines, pumping stations, filtration plants, and all appurtenances and machinery necessary or useful for obtaining, storing, treating, purifying or transporting water for domestic uses or purposes. The term "domestic uses or purposes" includes by way of example but not by way of limitation the use of water at any temperature for space heating or cooling, culinary, sanitary, recreational or therapeutic purposes;

(c) The term "sewerage system" shall include intercepting sewers, outfall sewers, force mains, collecting sewers, pumping stations, ejector stations, treatment plants, structures, buildings, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, transportation, treatment, purification, and disposal of the sewage of any city or any part of territory included within the territorial limits of any city;

(d) The term "off-street parking" shall include all machinery, equipment and appurtenances, including lands, easements, rights-of-way and buildings required, necessary or useful for the parking of motor vehicles on lands or places other than public highways;

(e) The term "airport facilities and air navigation facilities" shall include land acquisition, construction costs, buildings, equipment, and other necessary appurtenances, either wholly or partly within or without the corporate limits of such political subdivision of the state or owned or operated by a regional airport authority as defined by law, or wholly or partly within or without the state of Idaho, which are hereby deemed to be for a public purpose, which facilities are to be financed for, or to be leased, sold or

otherwise disposed of to private persons, associations or corporations, or to be held by the political subdivision of the state or regional airport authority as defined by law;

(f) The term "rehabilitate existing electrical generating facilities" shall include the reconstruction, replacement, and betterment of existing generation facilities, properties and other related structures, together with all necessary equipment and appurtenances related thereto, used in or useful for the generation of electricity, including power plants, turbine generators, dams, penstocks, step-up transformers, electrical equipment and other facilities related to hydroelectric production plants, and related facilities for flood control, environmental, public recreation and fish and wildlife mitigation and enhancement purposes made necessary in order to comply with applicable state and federal requirements, but does not include transmission and distribution lines and their related structures, equipment and appurtenances;

(g) The term "drainage system" shall include ditches, channels, creeks, ponds, intake structures, diversion structures, levies, storm sewers, pump stations, force mains, buildings, easements, machinery, equipment, connections and all other appurtenances necessary, useful or convenient for the collection, treatment and disposal of any surface water, nuisance ground or subsurface water or stormwater of any city; and

(h) The term "electric system" shall include all electric generation, transmission and distribution facilities comprising a municipal electric system and used to supply electricity to customers located within the service area of such system established by law, including all properties, structures, facilities, equipment and appurtenances used in or useful for the generation, transmission and distribution of electricity. The term "electric system" includes, by way of example, but not by way of limitation, power plants for the generation of electricity by any means, substations, transformers, transmission lines, distribution lines, and all other facilities, equipment and appurtenances necessary or desirable in connection with the generation, transmission or distribution of electricity, including energy conservation, public purpose and environmental facilities, programs and measures, and joint electric facilities as defined in section 50-342A, Idaho Code.

History.

1967, ch. 429, § 189, p. 1249; am. 1969, ch. 193, § 1, p. 564; am. 1977, ch. 50, § 1, p. 91; am. 1978, ch. 176, § 1, p. 402; am. 1979, ch. 304, § 3, p. 825; am. 1991, ch. 311, § 1, p. 818; am. 2011, ch. 129, § 1, p. 358.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 129, in subsection (a), inserted "airport facilities and" and "electric systems"; in subsection (e), substituted "political subdivision of the state" for "city", inserted "or owned or operated by a regional airport authority as defined by law" and added the language beginning "which are hereby deemed to be for a public purpose" through to the end; and added subsection (h).

JUDICIAL DECISIONS

Cited in: Alliance v. City of Idaho Falls, 742 F.3d 1100 (9th Cir. Dec. 31, 2013).

50-1030. Powers. — In addition to the powers which it may now have, any city shall have power under and subject to the following provisions:

(a) To acquire by gift or purchase and to construct, reconstruct, improve, better or extend any works within or without the city, or partially within or partially without the city, or within any part of the city, and acquire by gift or purchase lands or rights in lands or water rights in connection therewith, including easements, rights-of-way, contract rights, leases, franchises, approaches, dams and reservoirs; to sell excess or surplus water under such terms as are in compliance with section 42-222, Idaho Code, and deemed advisable by the city; to lease any portion of the excess or surplus capacity of any such works to any party located within or without the city, subject to the following conditions: that such capacity shall be returned or replaced by the lessee when and as needed by such city for the purposes set forth in section 50-1028, Idaho Code, as determined by the city; that the city shall not be made subject to any debt or liability thereby; and the city shall not pledge any of its faith or credit in aid to such lessee;

(b) To rehabilitate existing electric generating facilities;

(c) To exercise the right of eminent domain for any of the works, purposes or uses provided by this act, in like manner and to the same extent as provided in section 7-720, Idaho Code;

(d) To operate and maintain any works or rehabilitated existing electrical generating facilities within or without the boundaries of the city, or partially within or without the boundaries of the city, or within any part of the city;

(e) To issue its revenue bonds hereunder to finance, in whole or in part, the cost of the acquisition, construction, reconstruction, improvement, betterment or extension of any works, or to finance, in whole or in part, the cost of the rehabilitation of existing electrical generating facilities;

(f) To prescribe and collect rates, fees, tolls or charges, including the levy or assessment of such rates, fees, tolls or charges against governmental units, departments or agencies, including the state of Idaho and its subdivisions, for the services, facilities and commodities furnished by such works, or by such rehabilitated existing electrical generating facilities, and to provide methods of collections and penalties, including denial of service for nonpayment of such rates, fees, tolls or charges;

(g) To pledge an amount of revenue from such works or rehabilitated existing electrical generating facilities, including improvement, betterment or extensions thereto, thereafter constructed or acquired, sufficient to pay said bonds and interest as the same shall become due, and to create and maintain reasonable reserves therefor. Such amount may consist of all or any part or portion of such revenues. In determining such cost, there may be included all costs and estimated costs of the issuance of said bonds; all engineering, inspection, fiscal and legal expenses and interest which it is estimated will accrue during the construction period and for six (6) months thereafter on money borrowed or which it is estimated will be borrowed pursuant to sections 50-1027 through 50-1042, Idaho Code, and the costs of any bond reserve funds or working capital deemed necessary in connection with the bond issue;

(h) In the procurement of off-street parking sites, facilities, equipment and appurtenances, any city shall have power, in addition to those hereto-

fore conferred, to pledge the net revenues to be derived from on-street parking facilities not otherwise pledged, to be combined with the rates, fees, tolls and charges to be derived from the operation of off-street parking facilities, after the payment of all operative and maintenance costs, to the payment of revenue bonds and interest thereon issued under the authority of the revenue bond act;

(i) To issue bonds for the purpose of refunding any bonds theretofore issued under authority of the revenue bond act and to pay accrued interest and applicable redemption premiums on the bonds to be refunded, if the bonds to be refunded are due, callable or redeemable by their terms on or prior to the date that the refunding bonds are issued, or will become due, callable or redeemable by their terms within twelve (12) months thereafter, or if the bonds to be refunded, even though not becoming due, callable or redeemable within such period, are voluntarily surrendered by the holders thereof, for cancellation at the time of the issuance of the refunding bonds. All or part of any issue may be refunded and all or part of several issues may be refunded into a single issue of refunding bonds. There may be included with the refunding bonds, as part of a single issue, or in combination in one (1) or more series, bonds for any other purpose or purposes for which bonds are authorized to be issued under the revenue bond act. Refunding bonds shall be issued and secured in such manner as may be provided in the proceedings authorizing their issuance and as otherwise provided in the revenue bond act, and such changes may be made in the security and revenue pledged to the payment of the bonds so refunded, as provided by the governing body in the proceedings authorizing such bonds. No election on the issuance of refunding bonds shall be required, but if by an increase in the amount of bonds or by changes in the security or pledged revenues, the requirements of the constitution for an election shall become applicable, or if refunding bonds are combined into a single issue with bonds authorized for nonrefunding purposes, then such bonds with changes in security or revenues, or such bonds in excess of the amount of bonds refunded, as the case may be, must have been approved at an election as otherwise provided in the revenue bond act and the constitution. Refunding bonds may be exchanged for not less than a like principal amount of bonds authorized to be refunded, may be sold, or may be exchanged in part and sold in part. If sold, the proceeds of the sale, not required for the payment of expenses, and in any event, in an amount sufficient to assure the retirement of the bonds refundable, when such bonds become available for retirement, if not applied to a simultaneous payment and cancellation of the bonds refunded shall be escrowed with a bank or trust company and may be invested in United States government obligations or in obligations unconditionally guaranteed by the United States of America in such manner as may be provided in the authorizing proceedings;

(j) To issue its revenue bonds for airport facilities and air navigation facilities to be held by the political subdivision of the state or regional airport authority as defined by law payable solely from fees, charges, rents, payments, grants or any other revenues derived from the airport or any of its facilities, structures, systems of projects, or from any land, facilities,

buildings, projects or other property financed by such bonds; and to issue special facility bonds for airport facilities and air navigation facilities to be financed for, or to be leased, sold or otherwise disposed of to private persons, associations or corporations, to pledge to the payment of such bonds the fees, charges, rents, payments, grants, or any other revenues from the financed facilities and to secure such bonds by a deed of trust, mortgage or other lien on the financed property or by other security or credit enhancement; and neither airport revenue bonds nor special facility bonds shall be secured by the full faith and credit or the taxing power of the political subdivision of the state or regional airport authority as defined by law.

History.

1967, ch. 429, § 190, p. 1249; am. 1971, ch. 112, § 1, p. 383; am. 1977, ch. 50, § 2, p. 91; am. 1987, ch. 206, § 1, p. 433; am. 2011, ch. 129, § 2, p. 358.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 129, added subsection (j).

JUDICIAL DECISIONS

Condemnation.

City lacked extraterritorial eminent domain power to condemn easements located outside of its boundaries for the purpose of constructing electric transmission lines because there is no express grant of extraterritorial eminent domain power in in the general eminent domain statutes, §§ 7-701, 7-720. Subsection (c) of this section indicates that the legislature did not intend to augment the scope of the eminent domain power beyond the provisions of § 7-720, and the extraterritorial power of eminent domain to construct transmission lines was not implied or incident to the city's expressly granted powers. Alliance v. City of Idaho Falls, 742 F.3d 1100 (9th Cir. Dec. 31, 2013).

50-1035. Ordinance prior to construction — Election. — Before any city shall construct or acquire any works or rehabilitated existing electrical generating facilities under this chapter, the council of such city shall enact an ordinance or ordinances which shall, (a) set forth a brief and general description of the works or rehabilitated existing electrical generating facilities, and if the same are to be constructed, a reference to the preliminary report or plans and specifications which shall theretofore have been prepared and filed by an engineer chosen for that purpose; (b) set forth the cost thereof estimated by the engineer chosen as aforesaid; (c) order the construction or acquisition of such works or the rehabilitation of such existing electrical generating facilities; (d) direct that revenue bonds of the city shall be issued pursuant to this chapter in such amount as may be necessary to pay the cost of the works or rehabilitated existing electrical generating facilities; and (e) contain such other provisions as may be necessary in the proposal.

Such ordinance shall be passed, approved and published as provided by law for the enactment of general ordinances, but such city shall not incur or authorize in any year any indebtedness or liability under said ordinance exceeding in that year, the income and revenue provided for it for such year, without the assent of two-thirds (2/3) of the qualified electors of such city

voting at an election held for the purpose of authorizing or refusing to authorize the indebtedness or liability provided for in said ordinance; provided, that any city may, with the assent of a majority of the qualified electors voting at an election to be held for such purpose, issue revenue bonds for the purpose of providing funds to own, purchase, construct, extend or equip, within and without the corporate limits of such city, water systems, sewerage systems, water treatment plants, sewerage treatment plants, electric systems, or to rehabilitate existing electrical generating facilities, the principal and interest of which to be paid solely from the revenue derived from rates and charges for the use of, and the service rendered by such systems, plants and facilities. In accordance with section 3E, article VIII of the constitution of the state of Idaho, any political subdivision of the state or regional airport authority as defined by law, operating an airport may issue revenue bonds payable solely from fees, charges, rents, payments, grants or any other revenues derived from or relating to airport facilities and air navigation facilities to finance the costs of acquiring, constructing, installing and equipping airport facilities and air navigation facilities and such bonds shall not be secured by the full faith and credit or the taxing power of the political subdivision of the state or regional airport authority as defined by law.

Said ordinances shall provide for the holding of said election in accordance with the dates authorized in section 50-405, Idaho Code, by the county clerk in accordance with the provisions of title 34, Idaho Code. The notice of election shall set forth the purpose of said ordinance, the amount of bonds authorized by it, the maximum number of years from their respective dates for which such bonds may run, the voting places, the hours between which the polls will be open and the qualifications of voters who may vote thereat. In all other respects such election shall be conducted as are other city elections. The voting at such elections must be by ballot, and the ballots used shall be substantially as follows:

"In favor of issuing revenue bonds for the purposes provided by Ordinance No. ....."

"Against the issuance of revenue bonds for the purposes provided by Ordinance No. ....."

If, at such election, the required vote is in favor of issuing such revenue bonds, then such city may issue such bonds and create such indebtedness or liability in the manner and for the purpose specified in said ordinance.

History.

1967, ch. 429, § 195, p. 1249; am. 1973, ch. 40, § 1, p. 75; am. 1977, ch. 50, § 6, p. 91; am. 1981, ch. 300, § 2, p. 620; am. 2009, ch. 341, § 128, p. 993; am. 2011, ch. 129, § 3, p. 358.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 129, in the second paragraph, inserted "electric systems" near the end of the first sentence and added the last sentence.

50-1039. Lien of bonds. — All bonds of the same issue shall, subject to the prior and superior rights of outstanding bonds, claims or obligations,

have prior and paramount lien on the revenue of the works or rehabilitated existing electrical generating facilities for which said bonds have been issued, except that where provision is made in the ordinance authorizing any issue or series of bonds for the issuance of additional bonds in the future on a parity therewith pursuant to procedures or restrictions provided in such ordinance, additional bonds may be issued in the future on a parity with such issue or series in the manner so provided in such ordinance. All bonds of the same issue shall be equally and ratably secured without priority by reason of number, date of bonds, date of sale, date of execution, or date of delivery, by a lien on said revenue in accordance with the provisions of the Revenue Bond Act and the ordinance authorizing said bonds. Special facility bonds issued for airport facilities and air navigation facilities to be owned by private persons, associations or corporations and not by the political subdivision of the state or regional airport authority as defined by law shall be additionally secured by a deed of trust, mortgage or other lien on the facilities or other security or credit enhancement provisions.

History.
1967, ch. 429, § 199, p. 1249; am. 1970, ch. 219, § 1, p. 619; am. 1977, ch. 50, § 8, p. 91; am. 2011, ch. 129, § 4, p. 358.

STATUTORY NOTES

Cross References.
Revenue bond act, § 50-1027 et seq.

Amendments.
The 2011 amendment, by ch. 129, added the last sentence.

50-1044. Authority for resort city residents to approve and resort city governments to adopt, implement and collect certain city nonproperty taxes. — The voters of any resort city with a population not in excess of ten thousand (10,000) according to the most recent census within the state of Idaho, organized under the general laws of the state, special charter, or a general incorporation act, are hereby given the freedom to authorize their city government to adopt, implement and collect one (1) or more local-option nonproperty taxes as provided herein. A resort city is a city that derives the major portion of its economic well-being from businesses catering to recreational needs and meeting needs of people traveling to that destination city for an extended period of time. The corporate authorities of any such resort city are hereby given the freedom and authority to adopt, implement and collect one (1) or more local-option nonproperty taxes as provided herein, if approved by the required majority of city voters voting in an election as provided herein. No local-option nonproperty tax proposal may be presented to resort city voters for approval or modification for a period of eleven (11) months after an election to approve or disapprove such tax. The election may be a special election conducted for the exclusive purpose of approving or disapproving such tax or may be conducted as a part of any other special or general city election.

History.
1978, ch. 261, § 2, p. 567; am. 1981, ch. 328, § 1, p. 687; am. 2013, ch. 135, § 13, p. 307.

STATUTORY NOTES

Amendments.
The 2013 amendment, by ch. 135, substituted "eleven (11) months" for "one (1) year" in the next-to-last sentence.

Effective Dates.
Section 14 of S.L. 2013, ch. 135 declared an emergency. Approved March 22, 2013.

CHAPTER 13

PLATS AND VACATIONS

50-1301. Definitions. — The following definitions shall apply to terms used in this section and sections 50-1302 through 50-1334, Idaho Code.

(1) Basis of bearing: The bearing in degrees, minutes and seconds, or equivalent, of a line between two (2) monuments or corners that serves as the reference bearing for all other lines on the survey;

(2) Easement: A right of use, falling short of ownership, and usually for a certain stated purpose;

(3) Functioning street department: A city department responsible for the maintenance, construction, repair, snow removal, sanding and traffic control of a public highway or public street system which qualifies such department to receive funds from the highway distribution account to local units of government pursuant to section 40-709, Idaho Code;

(4) Idaho coordinate system: That system of coordinates established and designated by chapter 17, title 55, Idaho Code;

(5) Land survey: Measuring the field location of corners that:

(a) Determine the boundary or boundaries common to two (2) or more ownerships;

(b) Retrace or establish land boundaries;

(c) Retrace or establish boundary lines of public roads, streets, alleys or trails; or

(d) Plat lands and subdivisions thereof.

(6) Monument: A physical structure or object that occupies the position of a corner;

(7) Owner: The proprietor of the land (having legal title);

(8) Plat: The drawing, map or plan of a subdivision, cemetery, townsite or other tract of land, or a replatting of such, including certifications, descriptions and approvals;

(9) Private road: A road within a subdivision plat that is not dedicated to the public and not a part of a public highway system;

(10) Public highway agency: The state transportation department, any city, county, highway district or other public agency with jurisdiction over public highway systems and public rights-of-way;

(11) Public land survey corner: Any point actually established and monumented in an original survey or resurvey that determines the boundaries of remaining public lands, or public lands patented, represented on an official plat and in the field notes thereof, accepted and approved under authority delegated by congress to the U.S. general land office and the U.S. department of interior, bureau of land management;

(12) Public right-of-way: Any land dedicated and open to the public and under the jurisdiction of a public highway agency, where the public highway agency has no obligation to construct or maintain said right-of-way for vehicular traffic;

(13) Public street: A road, thoroughfare, alley, highway or bridge under the jurisdiction of a public highway agency;

(14) Reference point: A special monumented point that does not occupy the same geographical position as the corner itself and where the spatial relationship to the corner is known and recorded and that serves to locate the corner;

(15) Sanitary restriction: The requirement that no building or shelter which will require a water supply facility or a sewage disposal facility for people using the premises where such building or shelter is located shall be erected until written approval is first obtained from the director of the department of environmental quality or his delegate approving plans and specifications either for public water and/or sewage facilities, or individual parcel water and/or sewage facilities;

(16) Street: A road, thoroughfare, alley, highway or a right-of-way which may be open for public use but is not part of a public highway system nor under the jurisdiction of a public highway agency;

(17) Subdivision: A tract of land divided into five (5) or more lots, parcels, or sites for the purpose of sale or building development, whether immediate or future; provided that this definition shall not include a bona fide division or partition of agricultural land for agricultural purposes. A bona fide division or partition of agricultural land for agricultural purposes shall mean the division of land into lots, all of which are five (5) acres or larger, and maintained as agricultural lands. Cities or counties may adopt their own definition of subdivision in lieu of this definition;

(18) Witness corner: A monumented point on a lot line or boundary line of a survey, near a corner and established in situations where it is impracticable to occupy or monument the corner.

History.
1967, ch. 429, § 219, p. 1249; am. 1970, ch. 184, § 1, p. 533; am. 1971, ch. 329, § 1, p. 1294; am. 1988, ch. 175, § 1, p. 306; am. 1990, ch. 170, § 1, p. 367; am. 1992, ch. 262, § 1, p. 778; am. 1994, ch. 364, § 4, p. 1139; am. 1997, ch. 190, § 1, p. 517; am. 1998, ch. 220, § 1, p. 753; am. 1999, ch. 89, § 1, p. 290; am. 2010, ch. 256, § 1, p. 649; am. 2011, ch. 136, § 6, p. 383; am. 2014, ch. 58, § 1, p. 139.

STATUTORY NOTES

Cross References.
Highway distribution account, § 40-701.

Amendments.
The 2010 amendment, by ch. 256, added subsection (1) and redesignated the subsequent subsections accordingly; and in subsection (14), inserted "and welfare" following "state board of health".

The 2011 amendment, by ch. 136, added subsection (5) and redesignated the subsequent subsections accordingly; in subsection (14), substituted "Reference point" for "Reference monument," "special monumented point" for "special monument" and "and where the spatial relationship to the corner is known and recorded and that serves to locate the corner" for "but whose spatial relationship to the corner is known and recorded and which serves to witness the corner"; in subsection (17), substituted "this definition" for "the above definition" at the end; and, in subsection (18), deleted "usually" following "monumented point."

The 2014 amendment, by ch. 58, substituted "director of the department of environmental quality" for "state board of health and welfare by its administrator" in subsection (15).

50-1302. Duty to file. — Every owner creating a subdivision, as defined in section 50-1301, Idaho Code, shall cause a land survey and a plat thereof to be made which shall particularly and accurately describe and set forth all the streets, easements, public grounds, blocks, lots, and other essential information, and shall record said plat. This section is not intended to prevent the filing of other survey maps or plats. Description of lots or parcels of land, according to the number and designation on such recorded plat, in conveyances or for the purposes of taxation, shall be deemed good and valid for all intents and purposes.

History.
1967, ch. 429, § 220, p. 1249; am. 1997, ch. 190, § 2, p. 517; am. 2011, ch. 136, § 7, p. 383.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 136, substituted "as defined in section 50-1301, Idaho Code" for "as defined above" and "a land survey and a plat thereof to be made" for "the same to be surveyed and a plat made thereof."

JUDICIAL DECISIONS

Intention to Dedicate.
In an action for a declaration that a road in a subdivision was private, the trial court properly struck an affidavit by the engineer who prepared the subdivision plat as inadmissible parol evidence; the affidavit was introduced to vary the terms of an unambiguous instrument, the subdivision plat. Kepler-Fleenor v. Fremont County, 152 Idaho 207, 268 P.3d 1159 (2012).

50-1303. Survey — Monuments — Accuracy. — The centerline intersections and points where the centerline changes direction on all streets, avenues, and public highways, and all points, witness corners and reference points on the exterior boundary where the boundary line changes direction shall be marked with magnetically detectable monuments the

minimum size of which shall be five-eighths (5/8) of an inch in least dimension and two (2) feet long iron or steel rod unless special circumstances preclude use of such monument and all lot and block corners, witness corners and reference points for lot and block corners shall be marked with monuments conforming to the provisions of section 54-1227, Idaho Code. Monuments shall be marked such that measurements between them may be made to the nearest one-tenth (0.1) foot. All lot corners of a burial lot within a platted cemetery need not be marked with a monument, but the block corners shall be monumented in order to permit the accurate identification of each burial lot within the cemetery. The monuments shall conform to the provisions of section 54-1227, Idaho Code. The locations and descriptions of all monuments within a platted cemetery shall be recorded upon the plat, and the courses and distances of all boundary lines shall be shown, but may be shown by legend. The survey for any plat shall be conducted in such a manner as to produce an unadjusted mathematical error of closure of each area bounded by property lines within the survey of not more than one (1) part in five thousand (5,000).

History.
1967, ch. 429, § 221, p. 1249; am. 1997, ch. 190, § 3, p. 517; am. 1998, ch. 220, § 2, p. 753; am. 2008, ch. 378, § 1, p. 1023; am. 2011, ch. 136, § 8, p. 383.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 136, in the section heading, deleted "Stakes and" preceding "Monuments"; in the first sentence, twice substituted "reference points" for "reference monuments"; rewrote the second sentence, which read: "Monuments shall be plainly and permanently marked such that measurements may be taken to the marks within one-tenth (1/10) of a foot"; and, in the last sentence, inserted "each are bounded by property lines within the survey of" and substituted "not more than one" for "not less than one part."

50-1304. Essentials of plats. — (1) All plats offered for record in any county shall be prepared in black opaque image upon stable base drafting film with a minimum base thickness of 0.003 inches, by either a photographic process using a silver image emulsion or by use of a black opaque drafting film ink, by mechanical or handwritten means. The drafting film and image thereon shall be waterproof, tear resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. If ink is used on drafting film, the ink surface shall be coated with a suitable substance to assure permanent legibility. The drafting film must be of a type which can be reproduced by either a photographic or diazo process. Plats shall be eighteen (18) inches by twenty-seven (27) inches in size, with a three and one-half (3 1/2) inch margin at the left end for binding and a one-half (1/2) inch margin on all other edges. No part of the drawing or certificates shall encroach upon the margins. Signatures shall be in reproducible black ink. The sheet or sheets which contain the drawing or diagram representing the survey of the subdivision shall be drawn at a scale suitable to ensure the clarity of all lines, bearings and dimensions. In the event that any subdivision is of such magnitude that the drawing or diagram cannot be placed on a single sheet, serially numbered sheets shall be prepared and

match lines shall be indicated on the drawing or diagram with appropriate references to other sheets. The required dedications, acknowledgments and certifications shall appear on any of the serially numbered sheets.

(2) The plat shall show: (a) the streets and alleys, with widths and courses clearly shown; (b) each street named; (c) all lots numbered consecutively in each block, and each block lettered or numbered, provided however, in a platted cemetery, that each block, section, district or division and each burial lot shall be designated by number or letter or name; (d) each and all lengths of the boundaries of each lot shall be shown, provided however, in a platted cemetery, that lengths of the boundaries of each burial lot may be shown by appropriate legend; (e) the exterior boundaries shown by distance and bearing; (f) descriptions of survey monuments; (g) point of beginning with ties to at least two (2) public land survey corner monuments in one (1) or more of the sections containing the subdivision, or in lieu of public land survey corner monuments, to two (2) monuments recognized by the county surveyor; and also, if required by the city or county governing bodies, give coordinates based on the Idaho coordinate system; (h) the easements; (i) basis of bearings; and (j) subdivision name.

(3) When coordinates in the Idaho coordinate system are shown on a plat, the plat must show the national spatial reference system monuments and their coordinates used as the basis of the survey; the zone; the datum and adjustment; and the combined adjustment factor and the convergence angle and the location where they were computed.

History.
1967, ch. 429, § 222, p. 1249; am. 1978, ch. 106, § 1, p. 218; am. 1990, ch. 170, § 2, p. 367; am. 1997, ch. 190, § 4, p. 517; am. 2010, ch. 256, § 2, p. 649.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 256, added the subsection (1) and (2) designations and subsection (3).

50-1306A. Vacation of plats — Procedure. — (1) Any person, persons, firm, association, corporation or other legally recognized form of business desiring to vacate a plat or any part thereof must petition the city council if it is located within the boundaries of a city, or the county commissioners if it is located within the unincorporated area of the county. Such petition shall set forth particular circumstances of the requests to vacate; contain a legal description of the platted area or property to be vacated; the names of the persons affected thereby, and said petition shall be filed with the city clerk.

(2) Written notice of public hearing on said petition shall be given, by certified mail with return receipt, at least ten (10) days prior to the date of public hearing to all property owners within three hundred (300) feet of the boundaries of the area described in the petition. Such notice of public hearing shall also be published once a week for two (2) successive weeks in the official newspaper of the city, the last of which shall be not less than seven (7) days prior to the date of said hearing; provided, however, that in a proceeding as to the vacation of all or a portion of a cemetery plat where

there has been no interment, or in the case of a cemetery being within three hundred (300) feet of another plat for which a vacation is sought, publication of the notice of hearing shall be the only required notice as to the property owners in the cemetery.

(3) When the procedures set forth herein have been fulfilled, the city council may grant the request to vacate with such restrictions as they deem necessary in the public interest.

(4) If a petition to vacate is brought before county commissioners, and the plat or part thereof which is the subject of the petition is located within one (1) mile of the boundaries of any city, the county commissioners shall cause written notice of the public hearing on the petition to be given to the mayor or chief administrative officer of the city by regular mail at least thirty (30) days prior to the date of public hearing.

(5) In the case of easements granted for gas, sewer, water, telephone, cable television, power, drainage, and slope purposes, public notice of intent to vacate is not required. Vacation of these easements shall occur upon the recording of the new or amended plat, provided that all affected easement holders have been notified by certified mail, return receipt requested, of the proposed vacation and have agreed to the same in writing.

(6) When public streets or public rights-of-way are located within the boundary of a highway district, the highway district commissioners shall assume the authority to vacate said public streets and public rights-of-way as provided in section 40-203, Idaho Code.

(7) All publication costs shall be at the expense of the petitioner.

(8) Public highway agencies acquiring real property within a platted subdivision for highway right-of-way purposes shall be exempt from the provisions of this section.

(9) Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted.

History.

I.C., § 50-1306A, as added by 1971, ch. 6, § 1, p. 16; am. 1985, ch. 244, § 1, p. 575; am. 1989, ch. 247, § 1, p. 596; am. 1992, ch. 262, § 2, p. 778; am. 1994, ch. 364, § 5, p. 1139; am. 1997, ch. 190, § 6, p. 517; am. 1998, ch. 220, § 3, p. 753; am. 2014, ch. 21, § 1, p. 27; am. 2014, ch. 137, § 2, p. 372.

STATUTORY NOTES

Amendments.

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 137, substituted "as provided in section 40-203, Idaho Code" for "as provided in subsection (4) of this section" at the end of subsection (6).

The 2014 amendment, by ch. 21, in subsection (1), deleted "which is inside or within one (1) mile of the boundaries of any city" preceding "must petition" and substituted "if it is located within the boundaries of a city, or the county commissioners if it is located within the unincorporated area of the county" for "to vacate" in the first sentence; rewrote subsection (4), which formerly read: "When the platted area lies more than one (1) mile beyond the city limits, the procedures set forth herein shall be followed with the county commissioners of the county wherein the property lies. The county commissioners shall have authority, comparable to the city council, to grant the vacation, provided, however, when the platted area lies beyond one (1) mile of the city limits, but adjacent to a platted area within one (1) mile of the city, consent of the city council of the affected city shall be necessary in granting any vacation by the county commissioners"; and deleted "as provided in

subsection (4) of this section" at the end of subsection (6).

50-1309. Certification of plat — Dedication of streets and alleys — Dedication of private roads to public — Jurisdiction over private roads.

JUDICIAL DECISIONS

Dedication of Streets.

Where the plat of a subdivision, which was compulsorily recorded by a developer, depicts no public streets or rights-of-way, there can be no statutory dedication of the roads. Lattin v. Adams County, 149 Idaho 497, 236 P.3d 1257 (2010).

50-1310. Filing and recording — Record of plats — Filing of copy. — (1) All approved plats of subdivisions shall, upon the payment of the required fees, be filed by the county clerk or county recorder, and such filing with the date thereof shall be endorsed thereon. The plat or opaque copy thereof shall then be bound or filed with other plats of like character in a proper book or file designated as "Records of Plats."

(2) At the time of filing such plat, the owner or his representative shall also file with the county clerk or county recorder one (1) copy thereof. The copy shall be upon stable base drafting film with a minimum base thickness of 0.003 inches. The image thereon shall be by a photographic process using a silver image emulsion, or a process by which a copy is produced using a copy machine or by digital scanning and reproduction using black opaque drafting film ink. If a copy machine or ink is used, the surface shall be coated with a suitable substance to assure permanent legibility. The copy and image thereon shall be waterproof, tear-resistant, flexible, and capable of withstanding repeated handling, as well as providing archival permanence. The original plat shall be stored for safekeeping in a reproducible condition by the county. It shall be proper for the recorder to maintain for public reference a set of counter maps that are prints of the original maps. The original maps shall be produced for comparison upon demand. Full scale copies thereof shall be made available to the public, at the cost allowed in section 31-3205, Idaho Code, by the county recorder.

History.

1967, ch. 429, § 228, p. 1249; am. 1978, ch. 106, § 2, p. 218; am. 1993, ch. 343, § 1, p. 1282; am. 1997, ch. 190, § 9, p. 517; am. 2013, ch. 263, § 1, p. 648.

STATUTORY NOTES

Amendments.

The 2013 amendment, by ch. 263, added the subsection designations; and, in subsection (2), inserted "or a process by which a copy is produced using a copy machine or by digital scanning and reproduction using black opaque drafting film ink" in the third sentence and inserted the fourth sentence.

Effective Dates.

Section 2 of S.L. 2013, ch. 263 declared an emergency. Approved April 3, 2013.

50-1314. Enforcing execution of plat — Assessment of costs. — Whenever the owners of any tract of land have divided and sold or conveyed

five (5) or more parts thereof, or invested the public with any right therein, and have failed and neglected to execute and file a plat for record, as provided in sections 50-1301 through 50-1313, Idaho Code, the county recorder, when instructed by the board of county commissioners, shall notify some or all of such owners and proprietors by mail or otherwise, and demand an execution of such plat; if such owners or proprietors, whether notified or not, fail and neglect to execute and file for record said plat within thirty (30) days after the issuance of such notice, the recorder shall cause to be made a plat of such tract and any surveying necessary therefor. Said plat shall be prepared in accordance with requirements in sections 50-1301 through 50-1325, Idaho Code, and in addition, be signed and acknowledged by the recorder, who shall certify that he executed it by reason of the failure of the owners or proprietors named to do so, and filed for record, and, when so filed for record, shall have the same effect for all purposes as if executed, acknowledged and recorded by the owners or proprietors themselves.

A correct statement of the costs and expenses of such plat, surveying and recording, verified by oath, shall be by the recorder laid before the next session of the county board, who shall allow the same and order the same to be paid out of the county treasury, and who shall, at the same time, assess the same amount pro rata upon all several lots or parcels of said subdivided tract; said assessment may be billed to the property owner and, if not paid as requested, shall be collected with, and in like manner as the property taxes, and shall go to the county current expenses fund; or said board may direct suit to be brought in the name of the county before any court having jurisdiction, to recover from the said original owners or proprietors, said cost and expense of preparing and recording said plat.

History.
1967, ch. 429, § 232, p. 1249; am. 2011, ch. 120, § 1, p. 330.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 120, in the first sentence in the first paragraph, substituted "as provided in sections 50-1301 through 50-1313, Idaho Code, the county recorder, when instructed by the board of county commissioners" for "as provided in the thirteen (13) foregoing sections of this act, the county recorded"; and, in the last paragraph, inserted "may be billed to the property owner and, if not paid as requested" and substituted "property taxes, and shall go to the county current expenses fund" for "general taxes, and shall go to the general county fund."

50-1316. Penalty for selling unplatted lots.

JUDICIAL DECISIONS

Contracts Not Invalidated.
An agreement to develop property was not void merely because the final plat of the property was not recorded at the time the agreement was executed. This section does not prohibit the sale of lots of an unrecorded plat, nor does this section mandate that the vendor must record the plat prior to contracting for development of the property. Gugino v. Kastera, LLC (In re Ricks), 433 B.R. 806 (Bankr. D. Idaho 2010).

50-1317. Vacation procedure in unincorporated areas and in cities not exercising their corporate functions — Filing of petition — Notice of hearing. — Whenever any person, persons, firm, association or corporation interested in any city which if incorporated is not exercising its corporate functions may desire to vacate any lot, tract, private road, common, plot or any part thereof in any such city, it shall be lawful to petition the board of county commissioners of the county where such property is located, setting forth the particular circumstances of the case, and giving a distinct description of the property to be vacated and the names of the persons to be particularly affected thereby; which petition shall be filed with the appropriate county or highway district clerk and notice of the pendency of said petition shall be given for a period of thirty (30) days by written notice thereof, containing a description of the property to be vacated, posted in three (3) public or conspicuous places in said city, and also within the limits of said platted acreage, or in the event such property is located within a county in which there is published a newspaper, as defined by law, such notice shall also be published in such newspaper, once a week for two (2) successive weeks. Provided however, when a public street or public right-of-way is located within the boundary of a highway district or is under the jurisdiction of a county, the respective commissioners of the highway district or board of county commissioners shall assume the authority to vacate said public street or public right-of-way pursuant to section 40-203, Idaho Code. Land exclusive of public right-of-way that has been subdivided and platted in accordance with this chapter need not be vacated in order to be replatted.

History.

1967, ch. 429, § 235, p. 1249; am. 1992, ch. 262, § 6, p. 778; am. 1997, ch. 190, § 10, p. 517; am. 1998, ch. 220, § 4, p. 753; am. 2014, ch. 137, § 3, p. 372.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 137, near the beginning of the section, deleted "if unincorporated, or which" preceding "if incorporated", "or interested in any platted and subdivided tract or acreage outside the limits of any incorporated city" preceding "may desire to vacate", and "public street, public right-of-way" preceding "private road"; and rewrote the next-to-last sentence, which formerly read: "Provided, however, when a public street or public right-of-way is located within the boundary of a highway district, the commissioners of the highway district shall assume the authority to vacate said public street or public right-of-way".

50-1320. Vesting of title on vacation. — The part so vacated, if it be a lot or tract, shall vest in the rightful owner, who may have the title thereof according to law; or if a public square or common, the property may vest in the proper county, or if in a city, the property shall vest in the council for the use of such city, and the proper authorities may sell the same, and make a title to the purchaser thereof, and appropriate the proceeds thereof for the benefit of said corporation or county, as the case may be; or if the same be a street, all right and title thereto shall be distributed in accordance with section 50-311[, Idaho Code].

History.
1967, ch. 429, § 238, p. 1249.

STATUTORY NOTES

Compiler's Notes.
This section is set out to correct the statutory reference at the end of the section.

50-1321. Necessity for consent of adjoining owners — Acknowledgment and filing of consent — Limitation on rule — Prerequisites to order of vacation. — No vacation of a public street, public right of way or any part thereof having been duly accepted and recorded as part of a plat or subdivided tract shall take place unless the consent of the adjoining owners be obtained in writing and delivered to the public highway agency having jurisdiction over said public street or public right of way. Such public street or public right of way may, nevertheless, be vacated without such consent of the owners of the property abutting upon such public street or public right of way when such public street or public right of way has not been opened or used by the public for a period of five (5) years and when such nonconsenting owner or owners have access to his, her or their property from some other public street, public right of way or private road. However, before such order of vacation can be entered it must appear to the satisfaction of the public highway agency that the owner or owners of the property abutting said public street or public right of way have been served with notice of the proposed abandonment in the same manner and for the same time as is now or may hereafter be provided for the service of the summons in an action at law. Any vacation of lands within one (1) mile of a city shall require written notification to the city by regular mail at least thirty (30) days prior to the vacation.

History.
1967, ch. 429, § 239, p. 1249; am. 1992, ch. 262, § 8, p. 778; am. 2014, ch. 21, § 2, p. 27.

STATUTORY NOTES

Amendments.
The 2014 amendment, by ch. 21, rewrote the last sentence, which formerly read: "Any vacation of lands within one (1) mile of a city shall require notification and consent of the city".

50-1332. Setting interior monuments after recording of plat — Bond or cash deposit required — Release of bond — Return of cash deposit — Payment for survey work — County surveyor performing survey work. — (1) If the interior monuments for a subdivision are to be set on or before a specified date after the recording of the plat of the subdivision, the person subdividing the land described in the plat shall furnish, prior to recording the plat, to the governing body of the city or county which approved the plat, either a bond or cash deposit, at the option of the governing body, in an amount equal to one hundred twenty percent (120%) of the estimated cost of performing the work for the interior

monumentation. The estimated cost of performing such work will be determined by the professional land surveyor signing the plat.

(2) If the person subdividing the land described in subsection (1) of this section pays the professional land surveyor for performing the interior monumentation work and notifies the governing body of such payment, the governing body, within two (2) months after such notice, shall release the bond or return the cash deposit upon a finding that such payment has been made. Upon written request from the person subdividing the land, the governing body may pay the professional land surveyor from moneys within a cash deposit or bond held by it for such purpose and return the excess amount of the cash deposit, if any, to such person.

(3) In the event of the inability, refusal or failure of such professional land surveyor to set the interior monuments for a subdivision, the governing body may direct the county surveyor in his official capacity or contract with a professional land surveyor in private practice to set such monuments and reference such monuments for recording as provided in section 50-1333, Idaho Code. Payment of the fees of a county surveyor or professional land surveyor in private practice performing such work shall be made as otherwise provided in this section. In the event the professional land surveyor signing the plat performed his services pursuant to a contract between the person subdividing the land and a business entity possessing a certificate of authorization, as required in this chapter, and the professional land surveyor is unable, refuses or fails to set the interior monuments for a subdivision, a substitute professional land surveyor employed by the same business entity may assume responsible charge for the remainder of the project and set the monuments, as provided in this chapter, and the governing body shall not direct the county surveyor or contract with a professional land surveyor in private practice to set such monuments.

(4) In the event any interior monument cannot be placed at the location shown on the plat, the professional land surveyor shall place a witness corner or reference point and he shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show the location of any witness corner or reference point in relation to the platted location of the corner. In the event the professional land surveyor signing the plat does not set the interior monuments for a subdivision, the substitute professional land surveyor shall file a record of survey as provided in chapter 19, title 55, Idaho Code, to show which monuments were set by which professional land surveyor.

History.

I.C., § 50-1332, as added by 1987, ch. 227, § 1, p. 482; am. 1997, ch. 190, § 11, p. 517; am. 1998, ch. 220, § 5, p. 753; am. 2011, ch. 136, § 9, p. 383; am. 2012, ch. 25, § 1, p. 82.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 136, twice substituted "reference point" for "reference monument" in subsection (4).

The 2012 amendment, by ch. 25, inserted "professional land" in the last sentence of subsection (1) and twice in subsection (2); in subsection (3), substituted "inability, refusal or failure" for "death, disability or retirement from practice of the surveyor charged with the responsibility for setting interior monuments for a subdivision or upon the failure", substi-

tuted "the interior monuments for a subdivision" for "such monuments", and added the last sentence; and added the last sentence in subsection (4).

CHAPTER 16

CIVIL SERVICE

50-1604. Examinations — Qualifications of applicants — Rehires — Causes for removal, discharge or suspension of incumbents.

RESEARCH REFERENCES

A.L.R. — Nonsexual misconduct or irregularity as amounting to "conduct unbecoming an officer," justifying police officer's demotion or removal or suspension from duty. 19 A.L.R.6th 217.

CHAPTER 19

HOUSING AUTHORITIES AND COOPERATION LAW

SECTION.

50-1903. Definitions.

OPINIONS OF ATTORNEY GENERAL

IHFA.

The Idaho housing and finance association (IHFA) is the only Idaho-created entity that is statutorily qualified to implement HUD's Section 8 programs throughout the state. Every city- or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

50-1905. Creation of housing authorities.

OPINIONS OF ATTORNEY GENERAL

IHFA.

The Idaho housing and finance association (IHFA) is the only Idaho-created entity that is statutorily qualified to implement HUD's Section 8 programs throughout the state. Every city- or county-established housing authority, by definition, will be limited to the territorial limits of its establishing entity. OAG 12-2.

50-1919. Certificate of attorney general. [Repealed.]

Repealed by S.L. 2014, ch. 251, § 3, effective July 1, 2014.

History.

1967, ch. 429, § 409, p. 1249.

CHAPTER 20

URBAN RENEWAL LAW

50-2006. Urban renewal agency. — (a) There is hereby created in each municipality an independent public body corporate and politic to be known as the "urban renewal agency" that was created by resolution as provided in section 50-2005, Idaho Code, before July 1, 2011, for the municipality; provided, that such agency shall not transact any business or exercise its powers hereunder until or unless: (1) the local governing body has made the findings prescribed in section 50-2005, Idaho Code; and provided further, that such agency created after July 1, 2011, shall not transact any business or exercise its powers provided for in this chapter until (2) a majority of qualified electors, voting in a citywide or countywide election depending on the municipality in which such agency is created, vote to authorize such agency to transact business and exercise its powers provided for in this chapter. If prior to July 1, 2011, the local governing body has made the findings prescribed in subsection (a)(1) of this section then such agency shall transact business and shall exercise its powers hereunder and is not subject to the requirements of subsection (a)(2) of this section.

(b) Upon satisfaction of the requirements under subsection (a) of this section, the urban renewal agency is authorized to transact the business and exercise the powers hereunder by a board of commissioners to be established as follows:

(1) The mayor, by and with the advice and consent of the local governing body, shall appoint a board of commissioners of the urban renewal agency which shall consist of not less than three (3) commissioners nor more than nine (9) commissioners. In the order of appointment, the mayor shall designate the number of commissioners to be appointed, and the term of each, provided that the original term of office of no more than two (2) commissioners shall expire in the same year. The commissioners shall serve for terms not to exceed five (5) years, from the date of appointment, except that all vacancies shall be filled for the unexpired term.

(2) For inefficiency or neglect of duty or misconduct in office, a commissioner may be removed by a majority vote of the board or by the local governing body only after a hearing and after he shall have been given a copy of the charges at least ten (10) days prior to such hearing and have had an opportunity to be heard in person or by counsel. Any commission position which becomes vacant at a time other than the expiration of a term shall be filled by a majority vote of the board. The board may elect any person to fill such vacant position where such person meets the requirements of a commissioner provided for in this chapter.

(3) By enactment of an ordinance, the local governing body may appoint and designate itself to be the board of commissioners of the urban renewal

agency, in which case all the rights, powers, duties, privileges and immunities vested by the urban renewal law of 1965, and as amended, in an appointed board of commissioners, shall be vested in the local governing body, who shall, in all respects when acting as an urban renewal agency, be acting as an arm of state government, entirely separate and distinct from the municipality, to achieve, perform and accomplish the public purposes prescribed and provided by said urban renewal law of 1965, and as amended.

(4) By enactment of an ordinance, the local governing body may terminate the appointed board of commissioners and thereby appoint and designate itself as the board of commissioners of the urban renewal agency.

(c) A commissioner shall receive no compensation for his services but shall be entitled to the necessary expenses, including traveling expenses, incurred in the discharge of his duties. Each commissioner shall hold office until his successor has been appointed and has qualified. A certificate of the appointment or reappointment of any commissioner shall be filed with the clerk of the municipality and such certificate shall be conclusive evidence of the due and proper appointment of such commissioner.

The powers of an urban renewal agency shall be exercised by the commissioners thereof. A majority of the commissioners shall constitute a quorum for the purpose of conducting business and exercising the powers of the agency and for all other purposes. Action may be taken by the agency upon a vote of a majority of the commissioners present, unless in any case the bylaws shall require a larger number.

The commissioners shall elect the chairman, cochairman or vice chairman for a term of one (1) year from among their members. An agency may employ an executive director, technical experts and such other agents and employees, permanent and temporary, as it may require, and determine their qualifications, duties and compensation. For such legal service as it may require, an agency may employ or retain its own counsel and legal staff. An agency authorized to transact business and exercise powers under this chapter shall file, with the local governing body, on or before March 31 of each year a report of its activities for the preceding calendar year, which report shall include a complete financial statement setting forth its assets, liabilities, income and operating expense as of the end of such calendar year. The agency shall be required to hold a public meeting to report these findings and take comments from the public. At the time of filing the report, the agency shall publish in a newspaper of general circulation in the community a notice to the effect that such report has been filed with the municipality and that the report is available for inspection during business hours in the office of the city clerk or county recorder and in the office of the agency.

(d) An urban renewal agency shall have the same fiscal year as a municipality and shall be subject to the same audit requirements as a municipality. An urban renewal agency shall be required to prepare and file with its local governing body an annual financial report and shall prepare, approve and adopt an annual budget for filing with the local governing body,

for informational purposes. A budget means an annual estimate of revenues and expenses for the following fiscal year of the agency.

(e) An urban renewal agency shall comply with the public records law pursuant to chapter 3, title 9, Idaho Code, open meetings law pursuant to chapter 23, title 67, Idaho Code, the ethics in government law pursuant to chapter 7, title 59, Idaho Code, and the competitive bidding provisions of chapter 28, title 67, Idaho Code.

History.

1965, ch. 246, § 6, p. 600; am. 1976, ch. 256, § 1, p. 871; am. 1986, ch. 9, § 1, p. 49; am. 1987, ch. 276, § 1, p. 568; am. 2002, ch. 143, § 1, p. 394; am. 2005, ch. 213, § 21, p. 637; am. 2011, ch. 317, § 1, p. 911.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 317, in subsection (a), inserted "that was created by resolution as provided in section 50-2005, Idaho Code, before July 1, 2011," added the language at the end of the subsection, which begins "and provided further" and added the (1) and (2) designations; in the introductory paragraph in subsection (b), substituted "Upon satisfaction of the requirements under subsection (a) of this section" for "Upon the local governing body making such findings" and substituted "established" for "appointed or designated"; designated the former last sentence in paragraph (b)(1) as present paragraph (b)(2), redesignating the subsequent paragraphs; in paragraph (b)(2), inserted "by a majority vote of the board or by the local governing body" and added the last two sentences; and, in the third paragraph in subsection (c), deleted "The mayor may appoint a chairman, a cochairman, or a vice chairman for a term of office of one (1) year from among the commissioners, thereafter" from the beginning and inserted the fifth sentence.

50-2007. Powers. — Every urban renewal agency shall have all the powers necessary or convenient to carry out and effectuate the purposes and provisions of this act, including the following powers in addition to others herein granted:

(a) To undertake and carry out urban renewal projects and related activities within its area of operation; and to make and execute contracts and other instruments necessary or convenient to the exercise of its powers under this act; and to disseminate slum clearance and urban renewal information;

(b) To provide or to arrange or contract for the furnishing or repair by any person or agency, public or private, of services, privileges, works, streets, roads, public utilities or other facilities for or in connection with an urban renewal project; to install, construct, and reconstruct streets, utilities, parks, playgrounds, off-street parking facilities, public facilities, other buildings or public improvements; and any improvements necessary or incidental to a redevelopment project; and to agree to any conditions that it may deem reasonable and appropriate attached to federal financial assistance and imposed pursuant to federal law relating to the determination of prevailing salaries or wages or compliance with labor standards, in the undertaking or carrying out of an urban renewal project and related activities, and to include in any contract let in connection with such a project and related activities, provisions to fulfill such of said conditions as it may deem reasonable and appropriate;

(c) Within its area of operation, to acquire by purchase, lease, option, gift, grant, bequest, devise, eminent domain or otherwise, any real property or

personal property for its administrative purposes, together with any improvements thereon; to hold, improve, renovate, rehabilitate, clear or prepare for redevelopment any such property or buildings; to mortgage, pledge, hypothecate or otherwise encumber or dispose of any real property; to insure or provide for the insurance of any real or personal property or operations of the municipality against any risks or hazards, including the power to pay premiums on any such insurance; and to enter into any contracts necessary to effectuate the purposes of this act: Provided however, that no statutory provision with respect to the acquisition, clearance or disposition of property by public bodies shall restrict a municipality or other public body exercising powers hereunder in the exercise of such functions with respect to an urban renewal project and related activities, unless the legislature shall specifically so state;

(d) With the approval of the local governing body, (1) prior to approval of an urban renewal plan, or approval of any modifications of the plan, to acquire real property in an urban renewal area, demolish and remove any structures on the property, and pay all costs related to the acquisition, demolition, or removal, including any administrative or relocation expenses; and (2) to assume the responsibility to bear any loss that may arise as the result of the exercise of authority under this subsection in the event that the real property is not made part of the urban renewal project;

(e) To invest any urban renewal funds held in reserves or sinking funds or any such funds not required for immediate disbursement, in property or securities in which savings banks may legally invest funds subject to their control; to redeem such bonds as have been issued pursuant to section 50-2012, Idaho Code, at the redemption price established therein or to purchase such bonds at less than redemption price, all such bonds so redeemed or purchased to be canceled;

(f) To borrow money and to apply for and accept advances, loans, grants, contributions and any other form of financial assistance from the federal government, the state, county, or other public body, or from any sources, public or private, for the purposes of this act, and to give such security as may be required and to enter into and carry out contracts or agreements in connection therewith; and to include in any contract for financial assistance with the federal government for or with respect to an urban renewal project and related activities such conditions imposed pursuant to federal laws as the municipality may deem reasonable and appropriate and which are not inconsistent with the purposes of this act;

(g) Within its area of operation, to make or have made all surveys and plans necessary to the carrying out of the purposes of this act and to contract with any person, public or private, in making and carrying out such plans and to adopt or approve, modify and amend such plans, which plans may include, but are not limited to: (1) plans for carrying out a program of voluntary compulsory repair and rehabilitation of buildings and improvements, (2) plans for the enforcement of state and local laws, codes and regulations relating to the use of land and the use and occupancy of buildings and improvements and to the compulsory repair, rehabilitation, demolition, or removal of buildings and improvements, and (3) appraisals,

title searches, surveys, studies, and other plans and work necessary to prepare for the undertaking of urban renewal projects and related activities; and to develop, test, and report methods and techniques, and carry out demonstrations and other activities, for the prevention and the elimination of slums and urban blight and developing and demonstrating new or improved means of providing housing for families and persons of low income and to apply for, accept and utilize grants of funds from the federal government for such purposes;

(h) To prepare plans for and assist in the relocation of persons, including individuals, families, business concerns, nonprofit organizations and others displaced from an urban renewal area, and notwithstanding any statute of this state to make relocation payments to or with respect to such persons for which reimbursement or compensation is not otherwise made, including the making of such payments financed by the federal government;

(i) To exercise all or any part or combination of powers herein granted;

(j) In addition to its powers under subsection (b) of this section, an agency may construct foundations, platforms, and other like structural forms necessary for the provision or utilization of air rights sites for buildings and to be used for residential, commercial, industrial, and other uses contemplated by the urban renewal plan, and to provide utilities to the development site; and

(k) To use, lend or invest funds obtained from the federal government for the purposes of this act if allowable under federal laws or regulations.

History.
1965, ch. 246, § 7, p. 600; am. 1972, ch. 156, § 1, p. 344; am. 1987, ch. 259, § 1, p. 536; am. 2011, ch. 317, § 2, p. 911; am. 2013, ch. 63, § 1, p. 139.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 317, inserted "use" near the beginning of subsection (k).

The 2013 amendment, by ch. 63, deleted "to enter into any building or property in any urban renewal area in order to make inspections, surveys, appraisals, soundings or test borings, and to obtain, upon sufficient cause and after a hearing on the matter, an order for this purpose from a court of competent jurisdiction in the event entry is denied or resisted" following "Within its area of operation" at the beginning of subsection (c).

Compiler's Notes.
The term "this act," used throughout this section, refers to S.L. 1965, ch. 246, which is codified as §§ 50-2001 to 50-2018.

50-2008. Preparation and approval of plan for urban renewal project. — (a) An urban renewal project for an urban renewal area shall not be planned or initiated unless the local governing body has, by resolution, determined such area to be a deteriorated area or a deteriorating area or a combination thereof and designated such area as appropriate for an urban renewal project.

(b) An urban renewal agency may itself prepare or cause to be prepared an urban renewal plan, or any person or agency, public or private, may submit such a plan to an urban renewal agency. Prior to its approval of an urban renewal project, the local governing body shall submit such plan to the planning commission of the municipality, if any, for review and recom-

mendations as to its conformity with the general plan for the development of the municipality as a whole. The planning commission shall submit its written recommendations with respect to the proposed urban renewal plan to the local governing body within sixty (60) days after receipt of the plan for review. Upon receipt of the recommendations of the planning commission, or if no recommendations are received within said sixty (60) days, then without such recommendations, the local governing body may proceed with the hearing on the proposed urban renewal project prescribed by subsection (c) hereof.

(c) The local governing body shall hold a public hearing on an urban renewal project, after public notice thereof by publication in a newspaper having a general circulation in the area of operation of the municipality. The notice shall describe the time, date, place and purpose of the hearing, shall generally identify the urban renewal area covered by the plan, and shall outline the general scope of the urban renewal project under consideration.

(d) Following such hearing, the local governing body may approve an urban renewal project and the plan therefor if it finds that (1) a feasible method exists for the location of families who will be displaced from the urban renewal area in decent, safe and sanitary dwelling accommodations within their means and without undue hardship to such families; (2) the urban renewal plan conforms to the general plan of the municipality as a whole; (3) the urban renewal plan gives due consideration to the provision of adequate park and recreational areas and facilities that may be desirable for neighborhood improvement, with special consideration for the health, safety and welfare of children residing in the general vicinity of the site covered by the plan; and (4) the urban renewal plan will afford maximum opportunity, consistent with the sound needs of the municipality as a whole, for the rehabilitation or redevelopment of the urban renewal area by private enterprise: Provided, that if the urban renewal area consists of an area of open land to be acquired by the urban renewal agency, such area shall not be so acquired unless (1) if it is to be developed for residential uses, the local governing body shall determine that a shortage of housing of sound standards and design which is decent, safe and sanitary exists in the municipality; that the need for housing accommodations has been or will be increased as a result of the clearance of slums in other areas; that the conditions of blight in the area and the shortage of decent, safe and sanitary housing cause or contribute to an increase in and spread of disease and crime and constitute a menace to the public health, safety, morals, or welfare; and that the acquisition of the area for residential uses is an integral part of and essential to the program of the municipality, or (2) if it is to be developed for nonresidential uses, the local governing body shall determine that such nonresidential uses are necessary and appropriate to facilitate the proper growth and development of the community in accordance with sound planning standards and local community objectives, which acquisition may require the exercise of governmental action, as provided in this act, because of defective or unusual conditions of title, diversity of ownership, tax delinquency, improper subdivisions, outmoded street patterns, deterioration of site, economic disuse, unsuitable topogra-

phy or faulty lot layouts, the need for the correlation of the area with other areas of a municipality by streets and modern traffic requirements, or any combination of such factors or other conditions which retard development of the area.

(e) An urban renewal plan may be modified at any time: Provided that if modified after the lease or sale by the urban renewal agency of real property in the urban renewal project area, such modification may be conditioned upon such approval of the owner, lessee or successor in interest as the urban renewal agency may deem advisable and in any event shall be subject to such rights at law or in equity as a lessee or purchaser, or his successor or successors in interest, may be entitled to assert.

(f) Upon the approval by the local governing body of an urban renewal plan or of any modification thereof, such plan or modification shall be deemed to be in full force and effect for the respective urban renewal area, and the urban renewal agency may then cause such plan or modification to be carried out in accordance with its terms.

(g) Notwithstanding any other provisions of this act, where the local governing body certifies that an area is in need of redevelopment or rehabilitation as a result of a flood, fire, hurricane, earthquake, storm, or other catastrophe respecting which the governor of the state has certified the need for disaster assistance under 42 U.S.C. section 5121, or other federal law, the local governing body may approve an urban renewal plan and an urban renewal project with respect to such area without regard to the provisions of subsection (d) of this section and the provisions of this section requiring a general plan for the municipality and a public hearing on the urban renewal project.

(h) Any urban renewal plan containing a revenue allocation financing provision shall include the information set forth in section 50-2905, Idaho Code.

History.
1965, ch. 246, § 8, p. 600; am. 2011, ch. 317, § 3, p. 911.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 317, substituted "sixty (60) days" for "thirty (30) days" twice in subsection (b); substituted "42 U.S.C. section 5121" for "Public Law 875, Eighty-first Congress" in subsection (g); and added subsection (h).

Compiler's Notes.
The term "this act," used throughout this section, refers to S.L. 1965, ch. 246, which is codified as §§ 50-2001 to 50-2018.

50-2018. Definitions. — The following terms wherever used or referred to in this chapter, shall have the following meanings, unless a different meaning is clearly indicated by the context:

(1) "Agency" or "urban renewal agency" shall mean a public agency created by section 50-2006, Idaho Code.

(2) "Municipality" shall mean any incorporated city or town, or county in the state.

(3) "Public body" shall mean the state or any municipality, township, board, commission, authority, district, or any other subdivision or public body of the state.

(4) "Local governing body" shall mean the council or other legislative body charged with governing the municipality.

(5) "Mayor" shall mean the mayor of a municipality or other officer or body having the duties customarily imposed upon the executive head of a municipality.

(6) "Clerk" shall mean the clerk or other official of the municipality who is the custodian of the official records of such municipality.

(7) "Federal government" shall include the United States of America or any agency or instrumentality, corporate or otherwise, of the United States of America.

(8) "Deteriorated area" shall mean an area in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare. Provided however, this definition shall not apply to any agricultural operation, as defined in section 22-4502(2), Idaho Code, absent the consent of the owner of the agricultural operation or to any forest land as defined in section 63-1701(4), Idaho Code, absent the consent of the forest landowner, as defined in section 63-1701(5), Idaho Code, except for an agricultural operation or forest land that has not been used for three (3) consecutive years.

(9) "Deteriorating area" shall mean an area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use; provided, that if such deteriorating area consists of open land the conditions contained in the proviso in section 50-2008(d), Idaho Code, shall apply; and provided further, that any disaster area referred to in section 50-2008(g), Idaho Code, shall constitute a deteriorating area. Provided however, this definition shall not apply to any agricultural operation, as defined in section 22-4502(2), Idaho Code, absent the consent of the owner of the agricultural operation or to any forest land as defined in section 63-1701(4), Idaho Code, absent the consent of the forest landowner, as defined in section 63-1701(5), Idaho

Code, except for an agricultural operation or forest land that has not been used for three (3) consecutive years.

(10) "Urban renewal project" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight, and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(a) Acquisition of a deteriorated area or a deteriorating area or portion thereof;

(b) Demolition and removal of buildings and improvements;

(c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, off-street parking facilities, public facilities or buildings and other improvements necessary for carrying out in the urban renewal area the urban renewal objectives of this chapter in accordance with the urban renewal plan;

(d) Disposition of any property acquired in the urban renewal area, including sale, initial leasing or retention by the agency itself, at its fair value for uses in accordance with the urban renewal plan except for disposition of property to another public body;

(e) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(f) Acquisition of real property in the urban renewal area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;

(g) Acquisition of any other real property in the urban renewal area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for needed public facilities;

(h) Lending or investing federal funds; and

(i) Construction of foundations, platforms and other like structural forms.

(11) "Urban renewal area" means a deteriorated area or a deteriorating area or a combination thereof which the local governing body designates as appropriate for an urban renewal project.

(12) "Urban renewal plan" means a plan, as it exists from time to time, for an urban renewal project, which plan:

(a) Shall conform to the general plan for the municipality as a whole except as provided in section 50-2008(g), Idaho Code; and

(b) Shall be sufficiently complete to indicate such land acquisition, demolition and removal of structures, redevelopment, improvements, and rehabilitation as may be proposed to be carried out in the urban renewal area, zoning and planning changes, if any, land uses, maximum densities, building requirements, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(13) "Related activities" shall mean:

(a) Planning work for the preparation or completion of a community-wide plan or program pursuant to section 50-2009, Idaho Code; and

(b) The functions related to the acquisition and disposal of real property pursuant to section 50-2007(d), Idaho Code.

(14) "Real property" shall include all lands, including improvements and fixtures thereon, and property of any nature appurtenant thereto, or used in connection therewith, and every estate, interest, right and use, legal or equitable, therein, including terms for years and liens by way of judgment, mortgage or otherwise.

(15) "Bonds" shall mean any bonds, including refunding bonds, notes, interim certificates, certificates of indebtedness, debentures or other obligations.

(16) "Obligee" shall include any bondholder, agents or trustees for any bondholders, or lessor demising to the municipality property used in connection with urban renewal, or any assignee or assignees of such lessor's interest or any part thereof, and the federal government when it is a party to any contract with the municipality.

(17) "Person" shall mean any individual, firm, partnership, corporation, company, association, joint stock association, or body politic; and shall include any trustee, receiver, assignee, or other person acting in a similar representative capacity.

(18) "Area of operation" shall mean the area within the corporate limits of the municipality and the area within five (5) miles of such limits, except that it shall not include any area which lies within the territorial boundaries of another incorporated city or town or within the unincorporated area of the county unless a resolution shall have been adopted by the governing body of such other city, town or county declaring a need therefor.

(19) "Board" or "commission" shall mean a board, commission, department, division, office, body or other unit of the municipality.

(20) "Public officer" shall mean any officer who is in charge of any department or branch of the government of the municipality relating to health, fire, building regulations, or to other activities concerning dwellings in the municipality.

History.

1965, ch. 246, § 18, p. 600; am. 1970, ch. 103, § 1, p. 256; am. 1987, ch. 258, § 1, p. 524; am. 1987, ch. 259, § 4, p. 536; am. 1990, ch. 430, § 2, p. 1186; am. 2003, ch. 146, § 1, p. 420; am. 2006, ch. 310, § 1, p. 953; am. 2011, ch. 229, § 6, p. 623; am. 2011, ch. 317, § 4, p. 911.

STATUTORY NOTES

Amendments.

This section was amended by two 2011 acts which appear to be compatible and have been compiled together.

The 2011 amendment, by ch. 229, in subsections (8) and (9), updated the section references in the last sentences to reflect the 2011 amendment of § 22-4502.

The 2011 amendment, by ch. 317, inserted "or to any forest land as defined in section 63-1701(4), Idaho Code, absent the consent of the forest landowner, as defined in section 63-1701(5), Idaho Code" and "or forest land" near the end of subsections (8) and (9).

50-2033. Prohibited amendment. — Except for consolidation of revenue allocation areas, a revenue allocation area may not be amended to extend its boundaries. An amendment to an urban renewal plan created under this chapter that does not seek to increase the geographic area of the plan, or does not seek to extend the years of the plan beyond the maximum term allowed under chapter 29, title 50, Idaho Code, is not a prohibited amendment. No amendment to an existing revenue allocation area shall be interpreted to or shall cause an extension of the limitations established for the existing revenue allocation area as set forth in section 50-2904, Idaho Code. Notwithstanding these limitations, an urban renewal plan that includes a revenue allocation area may be extended only one (1) time to extend the boundary of the revenue allocation so long as the total area to be added is not greater than ten percent (10%) of the existing revenue allocation area and the area to be added is contiguous to the existing revenue allocation area but such contiguity cannot be established solely by a shoestring or strip of land which comprises a railroad or public right-of-way.

History.
I.C., § 50-2033, as added by 2011, ch. 317, § 5, p. 911.

CHAPTER 22

DISINCORPORATION PROCEDURE

SECTION.

50-2207. Disposition of records. — Upon the disincorporation of said city, every public officer of said city shall immediately turn over, to the board of county commissioners of the county in which said corporation is situated, all public property of every nature and description in their possession.

History.
1967, ch. 429, § 438, p. 1249; am. 2010, ch. 35, § 3, p. 65.

STATUTORY NOTES

Amendments.
The 2010 amendment, by ch. 35, deleted a proviso from the end of the section, which read: "Provided however, that all court records of the police court, if such there be in said corporation, shall be retained by said police judge as justice of the peace of such precinct in which said corporation is situated, and as such justice of the peace, he shall have authority to execute and complete all unfinished business standing on the same."

CHAPTER 29

LOCAL ECONOMIC DEVELOPMENT ACT

50-2901. Short title.

JUDICIAL DECISIONS

Constitutionality.

Where citizen brought suit against an urban renewal agency, alleging the agency's issuance of bonds to finance project violated limitations on actions by municipalities, the court held that the grant of authority to urban renewal agencies to issue revenue allocation bonds did not violate Idaho Const., art. VIII, § 3 or 4, because the agencies were not the alter egos of cities. Urban Renewal Agency of Rexburg v. Hart, 148 Idaho 299, 222 P.3d 467 (2009).

50-2903. Definitions. — The following terms used in this chapter shall have the following meanings, unless the context otherwise requires:

(1) "Act" or "this act" means this revenue allocation act.

(2) "Agency" or "urban renewal agency" means a public body created pursuant to section 50-2006, Idaho Code.

(3) "Authorized municipality" or "municipality" means any county or incorporated city which has established an urban renewal agency, or by ordinance has identified and created a competitively disadvantaged border community.

(4) "Base assessment roll" means the equalized assessment rolls, for all classes of taxable property, on January 1 of the year in which the local governing body of an authorized municipality passes an ordinance adopting or modifying an urban renewal plan containing a revenue allocation financing provision, except that the base assessment roll shall be adjusted as follows: the equalized assessment valuation of the taxable property in a revenue allocation area as shown upon the base assessment roll shall be reduced by the amount by which the equalized assessed valuation as shown on the base assessment roll exceeds the current equalized assessed valuation of any taxable property located in the revenue allocation area, and by the equalized assessed valuation of taxable property in such revenue allocation area that becomes exempt from taxation subsequent to the date of the base assessment roll. The equalized assessed valuation of the taxable property in a revenue allocation area as shown on the base assessment roll shall be increased by the equalized assessed valuation, as of the date of the base assessment roll, of taxable property in such revenue allocation area that becomes taxable after the date of the base assessment roll, provided any increase in valuation caused by the removal of the agricultural tax

exemption from undeveloped agricultural land in a revenue allocation area shall be added to the base assessment roll.

(5) "Budget" means an annual estimate of revenues and expenses for the following fiscal year of the agency. An agency shall, by September 1 of each calendar year, adopt and publish, as described in section 50-1002, Idaho Code, a budget for the next fiscal year. An agency may amend its adopted budget using the same procedures as used for adoption of the budget. For the fiscal year that immediately predates the termination date for an urban renewal plan involving a revenue allocation area or will include the termination date, the agency shall adopt and publish a budget specifically for the projected revenues and expenses of the plan and make a determination as to whether the revenue allocation area can be terminated before the January 1 of the termination year pursuant to the terms of section 50-2909(4), Idaho Code. In the event that the agency determines that current tax year revenues are sufficient to cover all estimated expenses for the current year and all future years, by September 1 the agency shall adopt a resolution advising and notifying the local governing body, the county auditor, and the state tax commission and recommending the adoption of an ordinance for termination of the revenue allocation area by December 31 of the current year and declaring a surplus to be distributed as described in section 50-2909, Idaho Code, should a surplus be determined to exist. The agency shall cause the ordinance to be filed with the office of the county recorder and the Idaho state tax commission as provided in section 63-215, Idaho Code. Upon notification of revenues sufficient to cover expenses as provided herein, the increment value of that revenue allocation area shall be included in the net taxable value of the appropriate taxing districts when calculating the subsequent property tax levies pursuant to section 63-803, Idaho Code. The increment value shall also be included in subsequent notification of taxable value for each taxing district pursuant to section 63-1312, Idaho Code, and subsequent certification of actual and adjusted market values for each school district pursuant to section 63-315, Idaho Code.

(6) "Clerk" means the clerk of the municipality.

(7) "Competitively disadvantaged border community area" means a parcel of land consisting of at least forty (40) acres which is situated within the jurisdiction of a county or an incorporated city and within twenty-five (25) miles of a state or international border, which the governing body of such county or incorporated city has determined by ordinance is disadvantaged in its ability to attract business, private investment, or commercial development, as a result of a competitive advantage in the adjacent state or nation resulting from inequities or disparities in comparative sales taxes, income taxes, property taxes, population or unique geographic features.

(8) "Deteriorated area" means:

(a) Any area, including a slum area, in which there is a predominance of buildings or improvements, whether residential or nonresidential, which by reason of dilapidation, deterioration, age or obsolescence, inadequate provision for ventilation, light, air, sanitation, or open spaces, high density of population and overcrowding, or the existence of conditions

which endanger life or property by fire and other causes, or any combination of such factors, is conducive to ill health, transmission of disease, infant mortality, juvenile delinquency, or crime, and is detrimental to the public health, safety, morals or welfare.

(b) Any area which by reason of the presence of a substantial number of deteriorated or deteriorating structures, predominance of defective or inadequate street layout, faulty lot layout in relation to size, adequacy, accessibility or usefulness, insanitary or unsafe conditions, deterioration of site or other improvements, diversity of ownership, tax or special assessment delinquency exceeding the fair value of the land, defective or unusual conditions of title, or the existence of conditions which endanger life or property by fire and other causes, or any combination of such factors, results in economic underdevelopment of the area, substantially impairs or arrests the sound growth of a municipality, retards the provision of housing accommodations or constitutes an economic or social liability and is a menace to the public health, safety, morals or welfare in its present condition and use.

(c) Any area which is predominately open and which because of obsolete platting, diversity of ownership, deterioration of structures or improvements, or otherwise, results in economic underdevelopment of the area or substantially impairs or arrests the sound growth of a municipality. The provisions of section 50-2008(d), Idaho Code, shall apply to open areas.

(d) Any area which the local governing body certifies is in need of redevelopment or rehabilitation as a result of a flood, storm, earthquake, or other natural disaster or catastrophe respecting which the governor of the state has certified the need for disaster assistance under any federal law.

(e) Any area which by reason of its proximity to the border of an adjacent state is competitively disadvantaged in its ability to attract private investment, business or commercial development which would promote the purposes of this chapter.

(f) "Deteriorated area" does not mean not developed beyond agricultural, or any agricultural operation as defined in section 22-4502(1), Idaho Code, or any forest land as defined in section 63-1701(4), Idaho Code, unless the owner of the agricultural operation or the forest landowner of the forest land gives written consent to be included in the deteriorated area, except for an agricultural operation or forest land that has not been used for three (3) consecutive years.

(9) "Facilities" means land, rights in land, buildings, structures, machinery, landscaping, extension of utility services, approaches, roadways and parking, handling and storage areas, and similar auxiliary and related facilities.

(10) "Increment value" means the total value calculated by summing the differences between the current equalized value of each taxable property in the revenue allocation area and that property's current base value on the base assessment roll, provided such difference is a positive value.

(11) "Local governing body" means the city council or board of county commissioners of a municipality.

(12) "Plan" or "urban renewal plan" means a plan, as it exists or may from time to time be amended, prepared and approved pursuant to section 50-2008, Idaho Code, and any method or methods of financing such plan, which methods may include revenue allocation financing provisions.

(13) "Project" or "urban renewal project" or "competitively disadvantaged border areas" may include undertakings and activities of a municipality in an urban renewal area for the elimination of deteriorated or deteriorating areas and for the prevention of the development or spread of slums and blight and may involve slum clearance and redevelopment in an urban renewal area, or rehabilitation or conservation in an urban renewal area, or any combination or part thereof in accordance with an urban renewal plan. Such undertakings and activities may include:

(a) Acquisition of a deteriorated area or a deteriorating area or portion thereof;

(b) Demolition and removal of buildings and improvement;

(c) Installation, construction, or reconstruction of streets, utilities, parks, playgrounds, open space, off-street parking facilities, public facilities, public recreation and entertainment facilities or buildings and other improvements necessary for carrying out, in the urban renewal area or competitively disadvantaged border community area, the urban renewal objectives of this act in accordance with the urban renewal plan or the competitively disadvantaged border community area ordinance.

(d) Disposition of any property acquired in the urban renewal area or the competitively disadvantaged border community area (including sale, initial leasing or retention by the agency itself) or the municipality creating the competitively disadvantaged border community area at its fair value for uses in accordance with the urban renewal plan except for disposition of property to another public body;

(e) Carrying out plans for a program of voluntary or compulsory repair and rehabilitation of buildings or other improvements in accordance with the urban renewal plan;

(f) Acquisition of real property in the urban renewal area or the competitively disadvantaged border community area which, under the urban renewal plan, is to be repaired or rehabilitated for dwelling use or related facilities, repair or rehabilitation of the structures for guidance purposes, and resale of the property;

(g) Acquisition of any other real property in the urban renewal area or competitively disadvantaged border community area where necessary to eliminate unhealthful, insanitary or unsafe conditions, lessen density, eliminate obsolete or other uses detrimental to the public welfare, or otherwise to remove or to prevent the spread of blight or deterioration, or to provide land for needed public facilities or where necessary to accomplish the purposes for which a competitively disadvantaged border community area was created by ordinance;

(h) Lending or investing federal funds; and

(i) Construction of foundations, platforms and other like structural forms.

(14) "Project costs" includes, but is not limited to:

(a) Capital costs, including the actual costs of the construction of public works or improvements, facilities, buildings, structures, and permanent fixtures; the demolition, alteration, remodeling, repair or reconstruction of existing buildings, structures, and permanent fixtures; the acquisition of equipment; and the clearing and grading of land;

(b) Financing costs, including interest during construction and capitalized debt service or repair and replacement or other appropriate reserves;

(c) Real property assembly costs, meaning any deficit incurred from the sale or lease by a municipality of real or personal property within a revenue allocation district;

(d) Professional service costs, including those costs incurred for architectural, planning, engineering, and legal advice and services;

(e) Direct administrative costs, including reasonable charges for the time spent by municipal employees in connection with the implementation of a project plan;

(f) Relocation costs;

(g) Other costs incidental to any of the foregoing costs.

(15) "Revenue allocation area" means that portion of an urban renewal area or competitively disadvantaged border community area where the equalized assessed valuation (as shown by the taxable property assessment rolls) of which the local governing body has determined, on and as a part of an urban renewal plan, is likely to increase as a result of the initiation of an urban renewal project or competitively disadvantaged border community area. The base assessment roll or rolls of revenue allocation area or areas shall not exceed at any time ten percent (10%) of the current assessed valuation of all taxable property within the municipality.

(16) "State" means the state of Idaho.

(17) "Tax" or "taxes" means all property tax levies upon taxable property.

(18) "Taxable property" means taxable real property, personal property, operating property, or any other tangible or intangible property included on the equalized assessment rolls.

(19) "Taxing district" means a taxing district as defined in section 63-201, Idaho Code, as that section now exists or may hereafter be amended.

(20) "Termination date" means a specific date no later than twenty (20) years from the effective date of an urban renewal plan or as described in section 50-2904, Idaho Code, on which date the plan shall terminate. Every urban renewal plan shall have a termination date that can be modified or extended subject to the twenty (20) year maximum limitation. Provided however, the duration of a revenue allocation financing provision may be extended as provided in section 50-2904, Idaho Code.

History.

1988, ch. 210, § 3, p. 393; am. 1990, ch. 430, § 4, p. 1186; am. 1994, ch. 381, § 2, p. 1222; am. 1996, ch. 322, § 54, p. 1029; am. 2000, ch. 275, § 1, p. 893; am. 2002, ch. 143, § 2, p. 394; am. 2011, ch. 317, § 6, p. 911.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 317, added the provision to the end of subsection (4); added paragraph (8)(f); inserted "where" in subsec-

tion (15); and substituted "twenty (20) years" for "twenty-four (24) years" twice in subsection (20).

Compiler's Notes.

The words "this act" refer to S.L. 1988, ch. 210, which is compiled as §§ 50-2901 to 50-2912.

Effective Dates.

Section 11 of S.L. 2011, ch. 317 declared an emergency retroactively to January 1, 2011, only as it appears to the amendment of Section 50-2903(4). Approved April 13, 2011.

50-2904. Authority to create revenue allocation area. — An authorized municipality is hereby authorized and empowered to adopt, at any time, a revenue allocation financing provision, as described in this chapter, as part of an urban renewal plan or competitively disadvantaged border community area ordinance. A revenue allocation financing provision may be adopted either at the time of the original adoption of an urban renewal plan or the creation by ordinance of a competitively disadvantaged border community area or thereafter as a modification of an urban renewal plan or the ordinance creating the competitively disadvantaged border community area. Urban renewal plans existing prior to the effective date of this section may be modified to include a revenue allocation financing provision. Except as provided in subsections (1), (2), (3) and (4) of this section, no revenue allocation provision of an urban renewal plan or competitively disadvantaged border community area ordinance, including all amendments thereto, shall have a duration exceeding twenty (20) years from the date the ordinance is approved by the municipality; and provided further, no additions to the land area of an existing revenue allocation area shall be interpreted to or shall cause an extension of the date of the twenty (20) year limit that was originally established for the revenue allocation area. Notwithstanding these limitations, the duration of the revenue allocation financing provision may be extended if:

(1) The maturity date of any bonds issued to provide funds for a specific project in the revenue allocation area and payable from the revenue allocation financing provision exceeds the duration of the revenue allocation financing provision, provided such bond maturity is not greater than twenty (20) years; or

(2) The urban renewal agency determines that it is necessary to refinance outstanding bonds payable from the revenue allocation financing provision to a maturity exceeding the twenty (20) year duration of the revenue allocation financing provision in order to avoid a default on the bonds; or

(3) The local governing body has adopted an urban renewal plan or competitively disadvantaged border community area ordinance or an amendment to an urban renewal plan or competitively disadvantaged border community area ordinance prior to July 1, 2000, in which is defined the duration of the plan beyond a period of twenty (20) years, in which case the revenue allocation provision shall have a duration as described in such urban renewal plan or competitively disadvantaged border community area ordinance or may be extended as set forth in subsection (2) of this section; and

(4) The local governing body has adopted an urban renewal plan or competitively disadvantaged border community area ordinance or an amendment to an urban renewal plan or competitively disadvantaged

border community area ordinance after July 1, 2000, and prior to July 1, 2011, in which is defined the duration of the plan beyond a period of twenty (20) years in which case the revenue allocation provision shall have a duration as described in such urban renewal plan or competitively disadvantaged border community area ordinance. The duration of the revenue allocation financing provision set forth in this subsection may be extended if the maturity date of any bonds issued to provide funds for a specific project in the revenue allocation area and payable from the revenue allocation financing provision exceeds the duration of the revenue allocation financing provision, provided such bond maturity is not greater than thirty (30) years or may be extended as set forth in subsection (2) of this section.

(5) During the extension set forth in subsections (1), (2), (3) and (4) of this section, any revenue allocation area revenues exceeding the amount necessary to repay the bonds during the period exceeding the maximum year maturity of the revenue allocation financing provision shall be returned to the taxing districts in the revenue allocation area on a pro rata basis.

History.

1988, ch. 210, § 4, p. 393; am. 1994, ch. 381, § 3, p. 1222; am. 2000, ch. 275, § 2, p. 893; am. 2002, ch. 143, § 3, p. 394; am. 2009, ch. 218, § 1, p. 680; am. 2011, ch. 317, § 7, p. 911.

STATUTORY NOTES

Amendments.

The 2011 amendment, by ch. 317, in the introductory paragraph, inserted "and (4)" and substituted "twenty (20)" for "twenty-four (24)" twice in the fourth sentence and; substituted "twenty (20) years" for "thirty (30) years" in subsection (1); substituted "twenty (20) years" for "twenty-four (24) years" in subsection (2); in subsection (3), substituted "twenty (20) years" for "twenty-four (24) years" and added "or may be extended as set forth in subsection (2) of this section"; substituted present subsection (4) for the former subsection (4), which read, "During the extensions set forth in subsections (1) and (2) of this section, any revenue allocation area revenues exceeding the amount necessary to repay the bonds during the period exceeding the twenty-four (24) year maturity of the revenue allocation financing provision shall be returned to the taxing districts in the revenue allocation area on a pro rata basis"; and added present subsection (5).

50-2905. Recommendation of urban renewal agency. — In order to implement the provisions of this chapter, the urban renewal agency of the municipality shall prepare and adopt a plan for each revenue allocation area and submit the plan and recommendation for approval thereof to the local governing body. The plan shall include:

(1) A statement describing the total assessed valuation of the base assessment roll of the revenue allocation area and the total assessed valuation of all taxable property within the municipality;

(2) A statement listing the kind, number, and location of all proposed public works or improvements within the revenue allocation area;

(3) An economic feasibility study;

(4) A detailed list of estimated project costs;

(5) A fiscal impact statement showing the impact of the revenue allocation area, both until and after the bonds are repaid, upon all taxing districts levying taxes upon property on the revenue allocation area;

(6) A description of the methods of financing all estimated project costs and the time when related costs or monetary obligations are to be incurred;

(7) A termination date for the plan and the revenue allocation area as provided for in section 50-2903(20), Idaho Code. In determining the termination date, the plan shall recognize that the agency shall receive allocation of revenues in the calendar year following the last year of the revenue allocation provision described in the urban renewal plan; and

(8) A description of the disposition or retention of any assets of the agency upon the termination date. Provided however, nothing herein shall prevent the agency from retaining assets or revenues generated from such assets as long as the agency shall have resources other than revenue allocation funds to operate and manage such assets.

History.
1988, ch. 210, § 5, p. 393; am. 2002, ch. 143, § 4, p. 394; am. 2011, ch. 317, § 8, p. 911.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 317, moved "a statement listing" from the end of the introductory paragraph to the beginning of subsection (2); inserted a new subsection (1) and redesignated the subsequent subsections.

50-2908. Determination of tax levies — Creation of special fund. [Effective until July 1, 2017.] — (1) For purposes of calculating the rate at which taxes shall be levied by or for each taxing district in which a revenue allocation area is located, the county commissioners shall, with respect to the taxable property located in such revenue allocation area, use the equalized assessed value of such taxable property as shown on the base assessment roll rather than on the current equalized assessed valuation of such taxable property, except the current equalized assessed valuation shall be used for calculating the tax rate for:

(a) Levies for refunds and credits pursuant to section 63-1305, Idaho Code, and any judgment pursuant to section 33-802(1), Idaho Code, certified after December 31, 2007;

(b) Levies for payment of judgments pursuant to section 63-1305A, Idaho Code;

(c) Levies permitted pursuant to section 63-802(3), Idaho Code, certified after December 31, 2007;

(d) Levies for voter approved general obligation bonds of any taxing district and plant facility reserve fund levies passed after December 31, 2007;

(e) Levies set forth in paragraphs (1)(a) through (d) of this subsection, first certified prior to December 31, 2007, when the property affected by said levies is included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or any taxing district after December 31, 2007; and

(f) School levies for supplemental maintenance and operation pursuant to section 33-802(3) and (4), Idaho Code, approved after December 31, 2007.

(2) With respect to each such taxing district, the tax rate calculated under subsection (1) of this section shall be applied to the current equalized assessed valuation of all taxable property in the taxing district, including

the taxable property in the revenue allocation area. The tax revenues thereby produced shall be allocated as follows:

(a) To the taxing district shall be allocated and shall be paid by the county treasurer:

(i) All taxes levied by the taxing district or on its behalf on taxable property located within the taxing district but outside the revenue allocation area;

(ii) A portion of the taxes levied by the taxing district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount produced by applying the taxing district's tax rate determined under subsection (1) of this section to the equalized assessed valuation, as shown on the base assessment roll, of the taxable property located within the revenue allocation area; and

(iii) All taxes levied by the taxing district to satisfy obligations specified in subsection (1)(a) through (f) of this section.

(b) To the urban renewal agency shall be allocated the balance, if any, of the taxes levied on the taxable property located within the revenue allocation area.

(3) Upon enactment of an ordinance adopting a revenue allocation financing provision as part of an urban renewal plan, the urban renewal agency shall create a special fund or funds to be used for the purposes enumerated in this chapter. The revenues allocated to the urban renewal agency pursuant to this chapter shall be paid to the agency by the treasurer of the county in which the revenue allocation district is located and shall be deposited by the agency into one (1) or more of such special funds. The agency may, in addition, deposit into such special fund or funds such other income, proceeds, revenues and funds it may receive from sources other than the revenues allocated to it under subsection (2)(b) of this section.

(4) For the purposes of section 63-803, Idaho Code, during the period when revenue allocation under this chapter is in effect, and solely with respect to any taxing district in which a revenue allocation area is located, the county commissioners shall, in fixing any tax levy other than the levy specified in subsection (1)(a) through (f) of this section, take into consideration the equalized assessed valuation of the taxable property situated in the revenue allocation area as shown in the base assessment roll, rather than the current equalized assessed value of such taxable property.

(5) For all other purposes, including, without limitation, for purposes of sections 33-802, 33-1002 and 63-1313, Idaho Code, reference in the Idaho Code to the term "market value for assessment purposes" (or any other such similar term) shall mean market value for assessment purposes as defined in section 63-208, Idaho Code.

History.

1988, ch. 210, § 8, p. 393; am. 1996, ch. 208, § 13, p. 658; am. 1996, ch. 322, § 55, p. 1029; am. 1997, ch. 117, § 8, p. 298; am. 2006 (1st E.S.), ch. 1, § 14; am. 2008, ch. 253, § 1, p. 741; am. 2009, ch. 50, § 1, p. 131; am. 2012, ch. 339, § 3, p. 934.

STATUTORY NOTES

Repealed effective July 1, 2017. This section is repealed effective July 1, 2017, pursuant to S.L. 2012, ch. 339, § 8, at which time a new version of this section will come into effect. For this section effective July 1, 2017, see the following section, also numbered § 50-2908.

Amendments.

The 2012 amendment, by ch. 339, added paragraph (1)(b), redesignated the subsequent paragraphs, and updated affected internal references.

Compiler's Notes.

Section 16 of S.L. 2012, ch. 339 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

Effective Dates.

Section 17 of S.L. 2012, ch. 339 declared an emergency and made this section retroactive to January 1, 2012. Approved April 5, 2012.

50-2908. Determination of tax levies — Creation of special fund. [Effective July 1, 2017.] — (1) For purposes of calculating the rate at which taxes shall be levied by or for each taxing district in which a revenue allocation area is located, the county commissioners shall, with respect to the taxable property located in such revenue allocation area, use the equalized assessed value of such taxable property as shown on the base assessment roll rather than on the current equalized assessed valuation of such taxable property, except the current equalized assessed valuation shall be used for calculating the tax rate for:

(a) Levies for refunds and credits pursuant to section 63-1305, Idaho Code, and any judgment pursuant to section 33-802(1), Idaho Code, certified after December 31, 2007;

(b) Levies permitted pursuant to section 63-802(3), Idaho Code, certified after December 31, 2007;

(c) Levies for voter approved general obligation bonds of any taxing district and plant facility reserve fund levies passed after December 31, 2007;

(d) Levies set forth in paragraphs (1)(a) through (c) of this subsection, first certified prior to December 31, 2007, when the property affected by said levies is included within the boundaries of a revenue allocation area by a change in the boundaries of either the revenue allocation area or any taxing district after December 31, 2007; and

(e) School levies for supplemental maintenance and operation pursuant to section 33-802(3) and (4), Idaho Code, approved after December 31, 2007.

(2) With respect to each such taxing district, the tax rate calculated under subsection (1) of this section shall be applied to the current equalized assessed valuation of all taxable property in the taxing district, including the taxable property in the revenue allocation area. The tax revenues thereby produced shall be allocated as follows:

(a) To the taxing district shall be allocated and shall be paid by the county treasurer:

(i) All taxes levied by the taxing district or on its behalf on taxable property located within the taxing district but outside the revenue allocation area;

(ii) A portion of the taxes levied by the taxing district or on its behalf on the taxable property located within the revenue allocation area, which portion is the amount produced by applying the taxing district's tax rate determined under subsection (1) of this section to the equalized assessed valuation, as shown on the base assessment roll, of the taxable property located within the revenue allocation area; and

(iii) All taxes levied by the taxing district to satisfy obligations specified in subsection (1)(a) through (e) of this section.

(b) To the urban renewal agency shall be allocated the balance, if any, of the taxes levied on the taxable property located within the revenue allocation area.

(3) Upon enactment of an ordinance adopting a revenue allocation financing provision as part of an urban renewal plan, the urban renewal agency shall create a special fund or funds to be used for the purposes enumerated in this chapter. The revenues allocated to the urban renewal agency pursuant to this chapter shall be paid to the agency by the treasurer of the county in which the revenue allocation district is located and shall be deposited by the agency into one (1) or more of such special funds. The agency may, in addition, deposit into such special fund or funds such other income, proceeds, revenues and funds it may receive from sources other than the revenues allocated to it under subsection (2)(b) of this section.

(4) For the purposes of section 63-803, Idaho Code, during the period when revenue allocation under this chapter is in effect, and solely with respect to any taxing district in which a revenue allocation area is located, the county commissioners shall, in fixing any tax levy other than the levy specified in subsection (1)(a) through (e) of this section, take into consideration the equalized assessed valuation of the taxable property situated in the revenue allocation area as shown in the base assessment roll, rather than the current equalized assessed value of such taxable property.

(5) For all other purposes, including, without limitation, for purposes of sections 33-802, 33-1002 and 63-1313, Idaho Code, reference in the Idaho Code to the term "market value for assessment purposes" (or any other such similar term) shall mean market value for assessment purposes as defined in section 63-208, Idaho Code.

History.

I.C., § 50-2908, as added by 2012, ch. 339, § 11, p. 934.

STATUTORY NOTES

Compiler's Notes.

For this section as effective until July 1, 2017, see the preceding section, also numbered § 50-2908.

Effective Dates.

Section 17 of S.L. 2012, ch. 339 makes the enactment of this section effective July 1, 2017.

50-2909. Issuance of bonds — Bond provisions. — (1) If the local governing body of an authorized municipality has enacted an ordinance adopting a revenue allocation financing provision as part of an urban

renewal plan, the urban renewal agency established by such municipality is hereby authorized and empowered:

(a) To apply the revenues allocated to it pursuant to section 50-2908, Idaho Code, for payment of the projected costs of any urban renewal project located in the revenue allocation area;

(b) To borrow money, incur indebtedness and issue one (1) or more series of bonds to finance or refinance, in whole or in part, the urban renewal projects authorized pursuant to such plan within the limits established by paragraph (c) of this subsection; and

(c) To pledge irrevocably to the payment of principal of and interest on such moneys borrowed, indebtedness incurred or bonds issued by the agency the revenues allocated to it pursuant to section 50-2908, Idaho Code.

All bonds issued under this section shall be issued in accordance with section 50-2012, Idaho Code, except that such bonds shall be payable solely from the special fund or funds established pursuant to section 50-2908, Idaho Code. On and after July 1, 2011, bonds may be issued for a maximum period of twenty (20) years.

(2) The agency shall be obligated and bound to pay such borrowed moneys, indebtedness, and bonds as the same shall become due, but only to the extent that the moneys are available in a special fund or funds established under section 50-2908, Idaho Code; and the agency is authorized to maintain an adequate reserve therefor from any moneys deposited in such a special fund or funds.

(3) Nothing in this chapter shall in any way impair any powers an urban renewal agency may have under subsection (a) of section 50-2012, Idaho Code.

(4) When the revenue allocation area plan budget described in section 50-2903(5), Idaho Code, estimates that all financial obligations have been provided for, the principal of and interest on such moneys, indebtedness and bonds have been paid in full, or when deposits in the special fund or funds created under this chapter are sufficient to pay such principal and interest as they come due, and to fund reserves, if any, or any other obligations of the agency funded through revenue allocation proceeds shall be satisfied and the agency has determined no additional project costs need be funded through revenue allocation financing, the allocation of revenues under section 50-2908, Idaho Code, shall thereupon cease; any moneys in such fund or funds in excess of the amount necessary to pay such principal and interest shall be distributed to the affected taxing districts in which the revenue allocation area is located in the same manner and proportion as the most recent distribution to the affected taxing districts of the taxes on the taxable property located within the revenue allocation area; and the powers granted to the urban renewal agency under section 50-2909, Idaho Code, shall thereupon terminate.

History.

1988, ch. 210, § 9, p. 393; am. 2002, ch. 143, § 5, p. 394; am. 2011, ch. 317, § 9, p. 911.

STATUTORY NOTES

Amendments.
The 2011 amendment, by ch. 317, added the last sentence in subsection (1).

Compiler's Notes.
Section 10 of S.L. 2011, ch. 317 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

JUDICIAL DECISIONS

Constitutionality.
Where citizen brought suit against an urban renewal agency, alleging the agency's issuance of bonds to finance project violated limitations on actions by municipalities, the court held that the grant of authority to urban renewal agencies to issue revenue allocation bonds did not violate Idaho Const., art. VIII, § 3 or 4, because the agencies were not the alter egos of cities. Urban Renewal Agency of Rexburg v. Hart, 148 Idaho 299, 222 P.3d 467 (2009).

50-2910. Bonds not general obligation of agency or municipality.

JUDICIAL DECISIONS

Constitutionality.
Where citizen brought suit against an urban renewal agency, alleging the agency's issuance of bonds to finance project violated limitations on actions by municipalities, the court held that the grant of authority to urban renewal agencies to issue revenue allocation bonds did not violate Idaho Const., art. VIII, § 3 or 4, because the agencies were not the alter egos of cities. Urban Renewal Agency of Rexburg v. Hart, 148 Idaho 299, 222 P.3d 467 (2009).

CHAPTER 30

IDAHO VIDEO SERVICE ACT

SECTION.

50-3001. Short title. — This chapter shall be known and may be cited as the "Idaho Video Service Act."

History.
I.C., § 50-3001, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3002. Definitions. — As used in this chapter:

(1) "Access to video service" means the capability of a video service provider to provide video service at a household address irrespective of whether a subscriber has ordered the service or whether the service is actually provided at the address.

(2) "Cable service" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2012.

(3) "Cable system" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2012.

(4) "Certificate of franchise authority" means a certificate issued by the Idaho secretary of state to a video service provider pursuant to the provisions of this chapter.

(5) "Chapter" means chapter 30, title 50, Idaho Code.

(6) "Franchise" has the meaning ascribed to it in 47 U.S.C. section 522, as that section existed on January 1, 2012. A certificate of franchise authority issued pursuant to section 50-3003, Idaho Code, shall constitute a franchise for the purposes of 47 U.S.C. section 522.

(7) "Franchising entity" means the state of Idaho or a city or county within the state of Idaho authorized by state or federal law to grant a franchise.

(8) "Governing body" means the city council or the board of county commissioners of a political subdivision.

(9) "Incumbent cable service provider" means a person who provides cable service and holds a franchise issued by a franchising entity prior to July 1, 2012.

(10) "Local unit of government" means a city, county, highway district or other governmental entity of the state of Idaho having maintenance and operation responsibility over the public rights-of-way within a geographical area for which a franchise or certificate of franchise authority has been issued by a franchising entity.

(11) "Nonincumbent video service provider" means:

(a) A person authorized under the provisions of this chapter to provide video service in an area in which cable service is being provided by an incumbent cable service provider; or

(b) A person authorized under the provisions of this chapter to provide video service in a geographical area in which, on July 1, 2012, there was no incumbent cable service provider providing cable service.

(12) "Political subdivision" means a city or county of the state of Idaho.

(13) "Public rights-of-way" means the area on, below or above a public roadway, highway, street, public sidewalk, alley, waterway or utility easement dedicated for compatible uses.

(14) "Service area" means contiguous geographical territory in the state

of Idaho within which territory a video service provider is authorized to provide video service pursuant to a certificate of franchise authority.

(15) "Service tier" means a category of video service provided by a video service provider to a subscriber and for which a separate rate is charged by the video service provider.

(16) "Subscriber" means any person in this state who purchases video service. "Subscriber" does not include any person who purchases video service for resale and who, upon resale, is required to pay a video service provider fee pursuant to this chapter or pursuant to the terms of a local franchise.

(17) "System operator" means any person or group of persons who provide video service and directly, or through one (1) or more affiliates, own a significant interest in the system or facilities through which the video service is provided and which person has been issued a certificate of franchise authority pursuant to the provisions of this chapter.

(18) "Video service" means the delivery of video programming to subscribers, which programming is generally considered comparable to video programming delivered to viewers by a television broadcast station, cable service or digital television service, without regard to the technology used to deliver the video service, and which service is provided primarily through equipment or facilities located in whole or in part in, on, under or over any public rights-of-way. The term includes cable service, but excludes any video programming provided to persons in their capacity as subscribers to commercial mobile service as defined in 47 U.S.C. section 332(d), or video programming provided as part of and via a service that enables end users to access content, information, electronic mail or other services offered over the public internet.

(19) "Video service provider" means a provider of video service, and includes an incumbent cable or multichannel video service provider, a nonincumbent video service provider or a system operator, unless the context in which the term is used indicates otherwise.

(20) "Video service provider fee" means the amount paid by a system operator to a political subdivision pursuant to section 50-3007, Idaho Code.

History.
I.C., § 50-3002, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3003. Franchising authority — Application for certificate of franchise authority — Modification of service areas — Term of certificate of franchise authority and termination thereof. — (1) On and after July 1, 2012, no person shall act as a video service provider or

operate a video service network within the state of Idaho unless such person:

(a) Is an incumbent cable service provider providing cable service within an existing franchise area by permission of, or pursuant to, a franchise from a political subdivision in effect on the effective date of this chapter or a subsequent renewal thereof; or

(b) Is a nonincumbent cable service provider who:

(i) Elects to negotiate a franchise agreement in accordance with title VI of the communications act of 1934, as amended, 47 U.S.C. section 521 et seq., with a political subdivision, which agreement establishes the terms and conditions applicable to that person to provide cable or video service within the jurisdictional boundaries of such political subdivision and has been issued a franchise from the political subdivision for such purpose; or

(ii) Elects to adopt the terms and conditions of an existing franchise issued by a political subdivision to an incumbent cable service provider providing video service within the same service area and who has been issued a franchise from the political subdivision authorizing the video service provider to provide video services within the political subdivision pursuant to the same terms and conditions as the franchise issued to the incumbent cable service provider in the political subdivision; or

(c) Has been granted a certificate of franchise authority to do business in the state of Idaho as a system operator by the Idaho secretary of state, as authorized in this chapter.

(2)(a) Nothing in this chapter shall be construed to prohibit a person from holding a franchise issued by a political subdivision and holding a certificate of franchise authority issued by the Idaho secretary of state for a different service area. Provided however, a video service provider shall not hold a franchise issued by a political subdivision and a certificate of franchise authority issued by the secretary of state for the same service area, except as permitted pursuant to paragraph (b) of this subsection.

(b) An incumbent cable service provider may submit an application for a certificate of franchise authority for a service area in which the incumbent cable service provider has an existing franchise from a political subdivision for such service area and, upon the granting of a certificate of franchise authority to the incumbent cable service provider, the incumbent cable service provider's franchise from the political subdivision shall no longer be of any force or effect.

(c) It shall be in an incumbent cable operator's sole discretion to determine, in each service area wherein it provides cable service, whether or not to apply for a certificate of franchise authority or continue to provide service under an existing franchise issued by a political subdivision.

(3) Any person seeking a certificate of franchise authority shall submit an application to the Idaho secretary of state that is in accordance with the requirements of this chapter and sets forth the following information:

(a) The name of the applicant and the address of its principal place of business within the state of Idaho and the names of the applicant's principal executive officers and its primary Idaho representative;

(b) A specific identification of the political subdivision(s) constituting the service area wherein the applicant intends to provide video service;
(c) The date on which the applicant intends to begin providing video service in the service area described in the application;
(d) Verification signed by an officer or general partner of the applicant that:
(i) The applicant has filed with the federal communications commission all forms required by that agency in advance of offering video service in this state; and
(ii) The applicant is legally, financially and technically qualified to provide video service; provided however, that a cable operator that was providing cable service in Idaho pursuant to a franchise in effect on the day before the effective date of this section shall be deemed to be legally, financially and technically qualified to provide service; and
(e) Verification that the applicant has procured and will maintain comprehensive general liability insurance coverage and automobile liability insurance coverage underwritten by one (1) or more companies licensed to do business in the state of Idaho requiring that the insurance carrier pay on behalf of the applicant, to a limit of not less than five hundred thousand dollars ($500,000) for bodily or personal injury, death, or property damage or loss as a result of any one (1) occurrence or accident, regardless of the number of persons injured or the number of claimants, arising out of the negligent or otherwise wrongful act or omission of the applicant or applicant's employees or agents. Verification that a certificate of self-insurance has been issued to the applicant and maintained in accordance with the provisions of section 49-1224, Idaho Code, shall be deemed to satisfy the requirements of this subsection.

(4) The application shall be accompanied by a filing fee as set forth in section 50-3005, Idaho Code. Within thirty (30) days after filing of the application, or within thirty (30) days after the filing of supplemental information necessary to make the application complete, the secretary of state shall determine the completeness of an application or, if applicable, shall notify the applicant of a determination that the application or the application as supplemented by additional information is incomplete, state the basis for that determination, and inform the applicant that the applicant may resubmit a correct application. The secretary of state shall issue a certificate of franchise authority within fifteen (15) days after the secretary of state's determination that the filed application is complete and in compliance with the requirements of this chapter. Upon issuance of a certificate of franchise authority, the secretary of state shall, within fifteen (15) days from the date of such issuance, provide written notice of such issuance, provide written notice of such issuance to the governing body of each political subdivision and of each local unit of government located within the service area designated in the application for a certificate of franchise authority.

(5) A holder of a certificate of franchise authority may modify the boundaries of an existing service area authorized under the certificate by filing written notice of the modification with the secretary of state accom-

panied by the fee required by section 50-3005, Idaho Code. The holder of the certificate may make the modification on the date on which it files the written notice with the secretary of state.

(6) A certificate of franchise authority may be transferred to any successor of the system operator to which the certificate of franchise authority was initially issued upon the successor filing an application containing the same information as required in subsection (3) of this section. A successor may only undertake operation and maintenance of video facilities pursuant to an approved certificate of franchise authority upon providing notice to the local unit of government with jurisdiction concerning the public rights-of-way to be used. A successor shall be responsible to conform to approved plans and permits to coordinate installation and maintenance as required by the local unit of government.

(7) A certificate of franchise authority may be terminated by the system operator submitting a written notice to the secretary of state and any affected local unit of government. No approval of the termination of the certificate of franchise authority shall be required by the secretary of state or by any affected local unit of government. Termination of a certificate of franchise authority shall not relieve a system operator of any obligation to mitigate the effects of abandoned physical facilities remaining in any public rights-of-way.

(8) A certificate of franchise authority shall be nonexclusive and shall be for an initial term of ten (10) years, subject to changes in federal law. A certificate of franchise authority may be renewed for additional ten (10) year periods for system operators in compliance with the requirements of subsection (3) of this section.

(9) To the extent required for the purposes of 47 U.S.C. sections 521 through 561, the state of Idaho shall constitute the franchising authority for system operators in the state of Idaho.

(10) The duties of the secretary of state pursuant to this chapter are ministerial.

History.
I.C., § 50-3003, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
The "s" enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3004. Provision of access to video service within a certain period — Suspension of authority for noncompliance with certain requirements. — (1) Not later than twenty-four (24) months after the date on which the secretary of state issues a certificate of franchise authority pursuant to section 50-3003, Idaho Code, the holder of the certificate must provide access to video service within the territorial boundaries of each

service area identified in and authorized by the certificate of franchise authority.

(2) If a holder of a certificate of franchise authority does not provide access to video service to at least one (1) household within the territorial boundaries of a service area within twenty-four (24) months from the date the certificate of franchise authority authorized the provision of video service within the service area, the holder's certificate of franchise authority shall be deemed to be revoked by operation of law as to such service area without the need for any notice, hearing or action by the secretary of state and such certificate of franchise authority shall not thereafter authorize the provision of video service within such service area by the holder of the certificate.

History.
I.C., § 50-3004, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3005. Fees. — (1) In carrying out the provisions of this chapter, the secretary of state shall charge and collect the fees set forth in this section.

(2) The filing fee for accepting an application for a certificate of franchise authority shall be one thousand dollars ($1,000), which fee shall include issuance of a certificate of franchise authority by the secretary of state.

(3) The filing fee for accepting an amendment to a certificate of franchise authority or providing a notice required by this chapter shall be five hundred dollars ($500).

History.
I.C., § 50-3005, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3006. Use of public rights-of-way by a holder of a certificate of franchise authority. — (1) A local unit of government shall allow the holder of a certificate of franchise authority to install, construct and maintain facilities within the public rights-of-way, over which the local unit of government has jurisdiction, to enable the provision of video services to subscribers to such services. No provision of this chapter shall diminish or otherwise limit the authority of this state, highway district or other local

unit of government having jurisdiction over the public rights-of-way. Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of any applicable local ordinance or other regulation governing the use of the public rights-of-way.

(2) If no local code, ordinance, resolution or other regulation by the local unit of government regulates the installation of physical facilities within public rights-of-way, the following requirements shall be deemed the minimum standards for such activities:

(a) At least thirty (30) days prior to contemplated construction within public rights-of-way, a specific description of the locations where the facilities are proposed to be installed within the public rights-of-way and the construction methods that are proposed must be provided to the local unit of government responsible for the rights-of-way procurement or maintenance.

(b) A certificate of franchise authority granted pursuant to this chapter carries with it an obligation to respect orderly management and maintenance of public rights-of-way by the system operator. A system operator authorized hereby to use public rights-of-way shall employ sound construction practices to maintain the integrity of public improvements and preexisting rights-of-way conditions and shall be responsible for repair or replacement of any improvements or maintenance or restoration of any conditions disrupted by construction activities. The system operator shall cause any such repair or replacement to be made promptly and in a manner that complies with adopted standards or as is otherwise appropriate to restore the rights-of-way to conditions existing before installation.

(c) The certificate of franchise authority granted pursuant to this chapter also carries a duty to coordinate installation of any physical plant in public rights-of-way with the public utilities or municipal services already using or contemplating use of the same or related public rights-of-way. Such coordination shall endeavor to minimize conflicts and avoid damage to existing or otherwise planned facilities.

(3) A local unit of government shall provide the holder of a certificate of franchise authority with open, comparable, nondiscriminatory and competitively neutral access to the public rights-of-way within its jurisdiction.

(4) A local unit of government may not impose requirements that discriminate against a system operator in any manner, including:

(a) The authorization or placement of facilities in public rights-of-way that is necessary for the provision of video services;

(b) Access to a public building; or

(c) The terms or conditions for access to any utility pole within the control of the local unit of government.

(d) Provided however, the provisions of this subsection shall not be construed to supersede an agreement, or portion of an agreement, related to the joint use of utility infrastructure within the control of the local unit of government, between the local unit of government and a video service.

(5) A local unit of government may impose a permit or license fee on a system operator relating to the opening, closing, inspection or repair of

public rights-of-way over which rights-of-way the local unit of government has jurisdiction, but only to the extent it imposes such a fee on other video service providers. A fee authorized in this section shall not exceed the actual costs incurred by the local unit of government that are directly related to the system operator's activity in the rights-of-way with which the permit is associated. In no event may a fee under this subsection be charged:

(a) If the system operator, or its affiliate, already has paid a permit fee in connection with the same activity in the public rights-of-way that would otherwise be covered by the permit fee under this section; or

(b) For general revenue purposes.

History.
I.C., § 50-3006, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3007. Video service provider fee. — (1) A system operator providing video service within a political subdivision pursuant to a certificate of franchise authority shall pay to the political subdivision in which it provides video service a video service provider fee as may be required by the political subdivision pursuant to this section. For the purposes of this section, subscribers whose service address is within the jurisdictional limits of a city shall be deemed city subscribers and those subscribers whose service address is outside the jurisdictional limits of a city shall be deemed county subscribers.

(2) The obligation to pay such a fee shall commence upon commencement of the provision of video service to subscribers. The video service provider's fee shall be paid to the political subdivision in which it provides video service on a quarterly basis, forty-five (45) days after the close of each calendar quarter, and shall be calculated as a percentage of gross revenues, as defined in subsection (4) of this section. Except as provided in section 50-3006, Idaho Code, the political subdivision may not require any additional fees or charges from the system operator and may not require the use of any other calculation method.

(3) The fee authorized by this section shall be a percentage of gross revenue, as defined in this section, and shall be determined by the political subdivision. If there is an incumbent cable service provider providing cable service in the political subdivision, the system operator shall pay an amount equal to the percentage of gross revenue paid by an incumbent cable service provider or five percent (5%), whichever is less. If there is no incumbent cable service provider having a franchise agreement with the political subdivision, or if a political subdivision has not previously established and assessed such fee to an incumbent cable service provider, the fee shall be established by the political subdivision, in an amount not in excess of five

percent (5%) of the gross revenue, which fee shall be applicable to all video service providers within the political subdivision, regardless of whether they provide video service pursuant to a local franchise or a certificate of franchise authority.

(4)(a) For purposes of this section:

(i) "Gross revenues" means all revenues, calculated in accordance with generally accepted accounting principles (GAAP), that are received by the system operator from subscribers for the provision of video service to subscribers within the jurisdictional limits of the political subdivision. Gross revenues shall include the following:

1. All recurring charges and fees paid by subscribers for the provision of video service; equipment rental charges, late fees and insufficient funds fees; and fees attributable to video service when sold individually or as part of a package or bundle, or functionally integrated with services other than video services. The term "gross revenues" shall not include any charges resulting from action by a federal agency or taxes or surcharges imposed by a governmental body which are separately itemized and billed by a video service provider to its subscribers;

2. Event-based charges for video service, including pay-per-view and video-on-demand; and

3. Any other consideration a system operator receives from its subscribers for providing video service when it is received in a transaction that would evade imposition of a franchise fee if such consideration is not included in revenue.

(ii) Notwithstanding any provision of this chapter, if a franchise agreement between a political subdivision and an incumbent cable service provider in effect on July 1, 2012, defines the term "gross revenues," which definition includes revenues in addition to the revenues set forth in the definition of gross revenues in subsection (4)(a) of this section, the video service provider fee paid by any system operator providing service within a political subdivision pursuant to a certificate of franchise authority issued on or after July 1, 2012, pursuant to this chapter, shall be calculated based upon the definition of gross revenues set forth in the franchise agreement between a political subdivision and an incumbent cable provider in effect on July 1, 2012.

(b) In the case of a video service that is bundled or integrated functionally with other services, capabilities or applications, the portion of the system operator's revenue attributable to the other services, capabilities or applications shall be included in gross revenues unless the provider can reasonably identify the division or exclusion of the revenue from its books and records, which may include the provider's tax billing records, that are kept in the regular course of business.

(c) Revenue of an affiliate shall be included in the calculation of gross revenues to the extent the treatment of the revenue as revenue of the affiliate would have the effect of evading the payment of the video service provider fee that would otherwise be paid for video service.

(5) Payment of the fees as required in this section shall be accompanied by a written report identifying the amount of revenues received from

subscribers for the provision of video services to the subscribers and identifying exclusions from gross revenues, if any. A political subdivision may, upon reasonable advance written notice, but not more frequently than once in any calendar year, review the business records of a system operator to the extent necessary to ensure proper and accurate payment of the video service provider fee. A system operator shall provide sufficient information about such revenues to a political subdivision to allow a proper compliance review by such political subdivision. The system operator shall keep all business records reflecting any gross revenues, even if there is a change in ownership, for at least three (3) years after those revenues are recognized by the system operator in its books and records. All records reasonably necessary for the audit shall, at the discretion of the political subdivision, be made available by the system operator at the location within the jurisdiction where the records are kept in the ordinary course of business, or may be provided electronically to the political subdivision with its consent. The political subdivision and the system operator shall each be responsible for their respective costs of the audit, unless the audit discloses that the system operator has underpaid the video service provider fee by more than seven percent (7%) during the examination period, in which case the system operator shall pay all of the reasonable and actual costs of the audit. Any undisputed amount or refund due to the political subdivision or the system operator shall be paid within sixty (60) days, plus interest at the statutory rate on civil judgments.

(6) A system operator may identify and collect the amount of the video service provider fee as a separate line item on the regular bill of each subscriber.

(7) Any city annexing lands shall notify a system operator in writing of any such annexation, including a description of the territory annexed. Beginning the first day of the calendar quarter occurring after the system operator has received at least forty-five (45) days' notice of annexation of customers into the city's corporate limits, subscribers within such annexed territory shall, for purposes of this section, be considered to be city subscribers.

History.
I.C., § 50-3007, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
The abbreviation enclosed in parentheses so appeared in the law as enacted.

Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3008. Discrimination among potential residential subscribers prohibited — Violations. — (1) A system operator shall not deny access to video service to any group of potential residential subscribers because of the income of the residents in the local area in which such group resides.

(2) For purposes of determining whether a system operator has violated the provisions of this section, cost, density, distance and technological or commercial limitations shall be taken into account. An alleged violation shall only be considered within the description of the service area set forth in a certificate of franchise authority. The inability to serve an end user because a holder of such certificate is prohibited from placing its own facilities in a building or property shall not be found to be a violation of the provisions of this section. The requirements of this subsection shall not be construed as authorizing any build-out requirements on a system operator.

(3) Any potential residential subscriber or group of residential subscribers who believes it is being denied access to services in violation of the provisions of this section may file a complaint with the governing authority of the political subdivision within the service area of the system operator in which the subscribers or potential subscribers reside. The complaint shall provide a clear statement of the facts and information upon which it bases the complaint. Upon receipt of any such complaint, the governing authority shall serve a copy of the complaint and supporting materials upon the subject system operator, and shall require the system operator to submit a written answer and other relevant information in response to the complaint within thirty (30) days from service of the complaint on the system operator. If the governing authority, after examination of the complaint and answer thereto, is not successful in informally resolving the dispute, the governing authority may require the system operator and the complainants to enter into mediation. Alternatively, either party may seek judicial determination of the issues. If a court finds that the holder of a certificate of franchise authority is denying access to video service to any group of potential residential subscribers because of the income level of the residents in the local area in which such group resides, the holder of a certificate of franchise authority shall provide access to video service to the affected group of potential subscribers within a reasonable period of time, as specified by the court, to cure such noncompliance.

History.
I.C., § 50-3008, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3009. Customer service standards. — A system operator shall comply with the customer service requirements as set forth in 47 CFR 76.309(c), as amended from time to time, and shall maintain a local or toll-free telephone number for customer service contact. A political subdivision may provide such assistance to subscribers as the political subdivision may deem appropriate to enforce the provisions of this section.

History.
I.C., § 50-3009, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3010. Designation and use of channel capacity for public, educational or governmental use. — (1) On, or within a reasonable period of time after, the date on which a system operator first provides video service to a subscriber within the service area of a political subdivision, a system operator shall designate a sufficient amount of capacity on its video service network to allow the provision of public, educational and governmental access channels or their functional equivalents, hereinafter referred to in this section as PEG channels, for noncommercial programming, as follows:

(a) Designate a sufficient amount of capacity on its network to allow the provision of PEG channels equal in number to those that have been activated by an incumbent cable service provider on the date on which the system operator first provides video service to a subscriber within such political subdivision.

(b) If there is no incumbent cable service provider or no PEG channels have been activated within the jurisdictional limits of the political subdivision located within the system operator's service area on the date on which the system operator first provides video service to a subscriber within such service area, the system operator shall, upon request, provide a maximum of two (2), in total, PEG channels for a political subdivision with a population of at least fifty thousand (50,000), and one (1), in total, PEG channel for a political subdivision with a population of less than fifty thousand (50,000). Provided however, a request by a political subdivision for the provision of PEG channels by a system operator, or a waiver of the requirement to provide PEG channels, shall be uniformly applied to all system operators providing video service within the political subdivision.

(c) The number of PEG channels set forth in paragraphs (a) and (b) of this subsection shall constitute the total number of PEG channels that a system operator may be required to designate on any single head-end or hub office, or on all commonly owned video service networks that share a common head-end or hub office, regardless of the number of political subdivisions served from such head-end or hub office. If more than one (1) political subdivision is served by a single or common head-end or hub office, the populations within the jurisdictions of all those political subdivisions shall be aggregated to determine the total number of PEG channels under paragraphs (a) and (b) of this subsection.

(d) PEG channels provided by a system operator may be located by the system operator on any service tier subscribed to by more than fifty

percent (50%) of a system operator's subscribers. PEG channels shall be of similar quality and functionality to that offered by commercial channels on such tier of service unless the signal is provided to the system operator at a lower quality or with less functionality.

(e) A system operator shall not change a channel location assigned to any PEG channel without written notice to the affected political subdivision at least sixty (60) days before the date on which the change is to become effective.

(f) The PEG agency producing the PEG programming and transmitting it to the system operator shall ensure that all transmissions, content or programming to be transmitted to the system operator are provided or submitted in a manner or form that is capable of being accepted and transmitted by the system operator over its video service network without alteration or change in the content or transmission signal and is compatible with the technology or protocol utilized by the system operator to deliver its video service. If the PEG agency cannot produce or maintain PEG programming in that manner or form, the agency shall do so in a manner that conforms to the then existing industry standards. If a change by the PEG agency in the manner or form of the content or programming is required, and such change conforms to the then existing industry standards, the system operator shall accept such programming for transmission over its video service network in the manner that is most economical to the system operator.

(2) The production and content of any programming aired on any channel provided for PEG use shall be solely the responsibility of the public, educational and governmental agencies receiving the benefit of such capacity. The system operator shall bear the responsibility for the transmission of such content only to the extent that such content complies with the requirements of subsection (1)(f) of this section.

(3) Governmental entities utilizing channels for PEG use shall make the programming available to all video service providers providing service within such governmental entity's jurisdiction in a nondiscriminatory manner. Each system operator shall be responsible for providing one (1) point of connectivity to the governmental entity's PEG channel distribution point within the jurisdiction to be served. The governmental entity providing programming for use on a channel designated for PEG use may request a change of the point of connectivity but shall pay the system operator for all costs associated with the change of the point of connectivity.

(4) No franchising entity may require a video service provider to provide any institutional network or equivalent capacity on its video service network.

(5) Where technically feasible, a system operator shall use reasonable efforts to interconnect its video network for the purposes of sharing PEG programming with other video service providers. Interconnection may be accomplished by direct cable, microwave link, satellite or other reasonable method of connection. System operators shall negotiate in good faith to provide interconnection of PEG channels. The video service provider requesting interconnection shall pay all costs for such interconnection.

(6) The operation of any PEG channel provided pursuant to this section and the production of any programming that appears on each such channel shall be the sole responsibility of the governmental entity receiving the benefit of such channel, and the system operator shall bear only the responsibility for the transmission of the programming on each such channel to subscribers and the initial cost of connecting to existing and obligated PEG access channels.

History.
I.C., § 50-3010, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

50-3011. Applicability of other law. — (1) The provisions of this chapter are intended to be construed to be consistent with the federal cable communications policy act of 1984, 47 U.S.C. sections 521 through 573.

(2) Except as otherwise stated herein, nothing in this chapter shall be interpreted to prevent an incumbent cable service provider, a nonincumbent video service provider, a system operator, a local unit of government or a franchising entity from entering into a negotiated franchise agreement with a political subdivision or seeking clarification of its rights and obligations under federal or state law or to exercise any right or authority under federal or state law.

(3) Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of titles 61 and 62, Idaho Code, regarding telecommunications service within the state of Idaho, nor to require a telephone corporation to obtain a certificate of franchise authority or local authorization pursuant to this chapter for the purpose of permitting or authorizing the telephone corporation to construct, upgrade, operate or maintain its telecommunications system to provide telecommunications service.

(4) No provision of this chapter shall diminish or otherwise limit the authority of this state, highway district or other local unit of government having jurisdiction over the public rights-of-way. Nothing in this chapter shall be construed to limit, abrogate or supersede the provisions of any applicable local ordinance or other regulation governing the use of the public rights-of-way.

History.
I.C., § 50-3011, as added by 2012, ch. 207, § 1, p. 552.

STATUTORY NOTES

Compiler's Notes.
Section 2 of S.L. 2012, ch. 207 provided: "Severability. The provisions of this act are hereby declared to be severable and if any

provision of this act or the application of such provision to any person or circumstance is declared invalid for any reason, such declaration shall not affect the validity of the remaining portions of this act."

CHAPTER 31

COMMUNITY INFRASTRUCTURE DISTRICT ACT

SECTION.

50-3102. Definitions. — As used in this chapter, the following terms shall have the meanings as stated:

(1) "Assessment area" means real property within the boundaries of a community infrastructure district that is the subject of a specific special assessment as set forth in this chapter.

(2) "Community infrastructure" means improvements that have a substantial nexus to the district and directly or indirectly benefit the district. Community infrastructure excludes public improvements fronting individual single family residential lots. Community infrastructure includes planning, design, engineering, construction, acquisition or installation of such infrastructure, including the costs of applications, impact fees and other fees, permits and approvals related to the construction, acquisition or installation of such infrastructure, and incurring expenses incident to and reasonably necessary to carry out the purposes of this chapter. Community infrastructure includes all public facilities as defined in section 67-8203(24), Idaho Code, and, to the extent not already included within the definition in section 67-8203(24), Idaho Code, the following:

(a) Highways, parkways, expressways, interstates, or other such designation, interchanges, bridges, crossing structures, and related appurtenances;

(b) Public parking facilities, including all areas for vehicular use for travel, ingress, egress and parking;

(c) Trails and areas for pedestrian, equestrian, bicycle or other nonmotor vehicle use for travel, ingress, egress and parking;

(d) Public safety facilities;

(e) Acquiring interests in real property for community infrastructure;

(f) Financing costs related to the construction of items listed in this subsection; and

(g) Impact fees.

(3) "Community infrastructure segment" means a separate or a discernible portion of a construction contract attributable to community infrastructure.

(4) "Debt service" means the principal of, interest on and premium, if any, on the bonds, when due, whether at maturity or prior redemption and fees

and costs of registrars, trustees, paying agents or other agents necessary to handle the bonds and the costs of credit enhancement or liquidity support.

(5) "District" means a community infrastructure district formed pursuant to this chapter. A district shall only include contiguous property at the time of formation. Land that is connected by only a shoestring or strip of land which comprises a railroad or highway right-of-way shall not be considered contiguous for the purposes of this chapter. Subsequent to a district's formation, a district may include noncontiguous property but only if specifically determined by the district board to have a substantial nexus to the initial district or to the community infrastructure contemplated by the initial district, and then authorized by the district board in its discretion and pursuant to section 50-3106, Idaho Code.

(6) "District board" means the board of directors of the district.

(7) "District development agreement" means an agreement between a property owner or developer, the county or city, any other political subdivision of the state, and/or the district. A district development agreement shall be used to establish obligations of the parties to the agreement relating to district financing and development, including: intergovernmental agreements; the ultimate public ownership of the community infrastructure financed by the district; the understanding of the parties with regard to future annexations of property into the district; the total amount of bonds to be issued by the district and the property taxes and special assessments to be levied and imposed to repay the bonds and the provisions regarding the disbursement of bond proceeds; the financial assurances, if any, to be provided with respect to the bonds; impact and other fees imposed by governmental authorities, including credit, prepayment and/or reimbursement with respect thereto; and other matters relating to the community infrastructure, such as construction, acquisition, planning, design, inspection, ownership and control. A district development agreement shall be in addition to and shall not supplant any development agreement entered into pursuant to section 67-6511A, Idaho Code, pursuant to which a governing body may require or permit as a condition of rezoning that an owner or developer make a written commitment concerning the use or development of the subject parcel.

(8) "General plan" means the general plan described in section 50-3103(1), Idaho Code, as the plan may be amended from time to time.

(9) "Governing body" means the county commissioners or city council that by law is constituted as the governing body of the county or city in which the district is located. Reference in this chapter to "governing body or bodies" shall mean the governing body or bodies of each county and city in which the district is located.

(10) "Owner" means the person listed as the owner of real property within the district or a proposed district on the current property rolls in effect at the time that the action, proceeding, hearing or election has begun; provided however, that if a person listed on the property rolls is no longer the owner of real property within the district or a proposed district and the name of the successor owner becomes known and is verified by recorded deed or other similar evidence of transfer of ownership, the successor owner shall be deemed to be the owner for the purposes of this chapter.

(11) "Market value for assessment purposes" means the amount of the last preceding equalized assessment of all taxable property and excludes all property exempt from taxation pursuant to section 63-602G, Idaho Code, within the community infrastructure district on the tax rolls completed and available as of the date of approval in the district bond issuance.

(12) "Person" means any entity, individual, corporation, partnership, firm, association, limited liability company, limited liability partnership, trust or other such entities as recognized by the state of Idaho. A "person in interest" is any person who is a qualified elector in the district, who is an owner of real property in the district or who is a real property taxpayer in the district.

(13) "Qualified elector" means a person who possesses all of the qualifications required of electors under the general laws of the state of Idaho and:

(a) Resides within the boundaries of a district or a proposed district and who is a qualified elector. For purposes of this chapter, such elector shall also be known as a "resident qualified elector"; or

(b) Is an owner of real property that is located within the district or a proposed district, who is not a resident qualified elector as set forth above. For purposes of this chapter, such elector shall also be known as an "owner qualified elector."

(14) "Special assessment" means an assessment imposed upon real property located within an assessment area for a specific purpose and of a special benefit to the affected property, collected and enforced in the same manner as property taxes, that may be apportioned according to the direct or indirect special benefits conferred upon the affected property, as well as any or any combination of the following: acreage, square footage, front footage, the cost of providing community infrastructure for the affected property, or any other reasonable method as determined by the district board.

History.

I.C., § 50-3102, as added by 2008, ch. 410, § 1, p. 1140; am. 2012, ch. 324, § 1, p. 884.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 324, inserted "have a substantial nexus to the district" in the first sentence in subsection (1) and substituted "but only if specifically determined by the district board to have a substantial nexus to the initial district or to the community infrastructure contemplated by the initial district, and then" for "but only as the same shall be if specifically determined and" in subsection (5).

50-3103. Creation of district. — (1) The process for the creation and organization of a community infrastructure district shall be initiated by a petition signed by not less than two-thirds (2/3) of the district residents or by all of the owners of all the lands located in the proposed district. The petition shall be filed with the clerk of the governing body in which the proposed district will be located. If the proposed district will be located within two (2) or more counties and/or cities, a petition conforming to the requirements of this section shall be filed with the clerk of each jurisdiction's governing body. The petition shall state the name of the proposed district

and the purpose for which it is formed, state that the formation of the district shall entitle the district to impose special assessments, levy property taxes and impose fees or charges to pay the cost of providing services, and shall be accompanied by a map depicting the boundaries of the proposed district, a legal description of the proposed district and a copy of the proposed general plan. The general plan shall describe or identify the community infrastructure to be financed by the district, the locations of the infrastructure and the estimated cost thereof, the proposed financing methods and the anticipated special assessments, tax levies or other charges, the approvals obtained pursuant to section 50-3101(4), Idaho Code, and may include possible alternatives, modifications or substitutions concerning locations, improvements, financing methods and other information provided in the general plan. The petition shall also include copies of any proposed district development agreement. The petition, together with all maps and other papers filed therewith, shall be open to public inspection in the office of the clerk in each county or city in which the petition is filed, during such business hours as the clerk may direct.

(2) Upon the filing of a petition, the governing body shall give notice of the filing of the petition and of the time and place set for a public hearing on the petition, which hearing shall be at a regular or special meeting held within not less than thirty (30) days nor more than ninety (90) days after the date of the filing of the petition. A notice of the time of the public hearing shall be published by the governing body twice, the first time not less than twelve (12) days prior to the hearing and the second time not less than five (5) days prior to the hearing, in a newspaper of general circulation in each county or city in which the proposed district will be located. A copy of such notice shall also be mailed to each district resident and each owner of real property in the district if known or such owner's agent if known, addressed to such person at his or her post office address if known or, if unknown, to a post office in the county or city where the district is located. Ownership of real property shall be determined as of the date of the adoption of the resolution ordering the hearing. The notice shall state that a community infrastructure district is proposed to be formed, giving the proposed boundaries thereof, and that any person who is a resident of or a real property taxpayer within the proposed district may, on the date fixed for the public hearing, appear and offer any testimony and submit written testimony prior thereto pertaining to the formation of the district and the proposed boundaries thereof. If the district will be located within two (2) or more counties and/or cities, the governing bodies of such counties and/or cities shall coordinate their efforts and shall either hold a public hearing in each county or city in which the proposed district will be located, or hold a single public meeting in such county or city as the governing bodies shall unanimously agree. The notice shall also state that any political subdivision of this state within whose jurisdiction the proposed district will be located, including, without limitation, a highway district, a school district, a fire district or an ambulance district, may, on the date fixed for the public hearing, appear and offer testimony and submit written testimony prior thereto pertaining to the formation of the district and the proposed boundaries thereof. After hearing

and considering any and all of the testimony given, the governing body shall thereupon approve a resolution either denying the petition or granting the same and, if granting the same, shall fix and describe in the resolution the boundaries of the proposed district and order the formation of the same. A resolution granting the petition may also include the approval of any district development agreement that has been approved by the governing body in the process of considering and approving the formation of the district. The boards of county commissioners and/or the city councils, as such governing bodies, are hereby specifically authorized to act in a joint manner for such purposes.

(3) Whenever a petition shall be filed as provided for in this section, the petitioner or petitioners shall deposit with each governing body a sum sufficient to defray the costs of publication and mailing of notice of the public hearing. In the event the district is formed, said petitioner or petitioners shall be entitled to be reimbursed such sum from the district, as a district formation cost related to the community infrastructure, from the district when moneys are available to the district. The amount required to be paid under this subsection shall be determined by each governing body and deposited before publication of the notice.

(4) The governing body may charge the petitioner or petitioners a reasonable fee for the governing body to retain outside advisors to assist the governing body in its consideration of the formation of the district. In the event the district is formed, the petitioner or petitioners shall be entitled to be reimbursed such fee from the district, as a district formation cost related to the community infrastructure, when moneys are available to the district.

History.
I.C., § 50-3103, as added by 2008, ch. 410, § 1, p. 1143; am. 2012, ch. 324, § 2, p. 884.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 324, inserted "and submit written testimony prior thereto" in the fifth and seventh sentences in subsection (2).

50-3104. District organization. — (1) If the petition for formation of the district is granted, the district shall comply with the filing and recording requirements of section 63-215, Idaho Code, and shall also cause a copy of the applicable resolution to be delivered to the county assessor of each county in which the district is located, cause a copy of the applicable resolution to be recorded with the county clerk in each county in which the district is located, and cause a copy of the applicable resolution to be filed with the state tax commission.

(2) Members of the governing body or bodies at the time of formation shall serve as the district board. If the district is located entirely within the boundaries of a city, three (3) members of the city council chosen by the city council shall serve as the district board. If the district is located entirely within the boundaries of a county and outside the boundaries of any city, the county commissioners of the county in which the district is located shall

serve as the district board. If the district is located within the jurisdiction of more than one (1) governing body, two (2) members of each governing body shall be appointed by that governing body to serve on the district board and, in addition, the governing body within whose jurisdiction the largest land area of the district is located shall appoint another member from its governing body to serve as an additional member of the district board, so that the district board will always be comprised of an odd number of members. For purposes of determining which jurisdiction has such largest land area, the land area in the district that is within the incorporated city limits shall be considered as being the land area of the city and shall not be considered as part of the land area of the county in which the city is located. If an area is added to the district pursuant to section 50-3106(2), Idaho Code, and such area is located in a city or county not already represented on the district board, or if the addition of such area changes the jurisdiction in which the largest land area of the district is located, the membership of the district board, at the time of addition of such area, shall be adjusted in conformity with the foregoing. If an area is deleted from the district pursuant to section 50-3106(1), Idaho Code, and, as a result, a county or city no longer has area within the district, or such deletion changes the jurisdiction in which the largest land area of the district is located, the membership of the district board, at the time of deletion of such area, shall be adjusted in conformity with the foregoing. If an area is annexed or deannexed by a city and, as a result, the jurisdiction of a county or city is changed, the membership of the district board at the time of such annexation or deannexation shall be adjusted in conformity with the foregoing. The boards of county commissioners and the city councils, as such governing bodies, are hereby specifically authorized to act in a joint manner for such purposes.

(3) Within thirty (30) days after the date of the resolution ordering formation of the district, and annually thereafter, the district board shall meet and elect a chairman and vice-chairman to act as the officers of the district board. The district board shall, unless otherwise agreed to by a majority of the board, meet in the county or city within which the largest land area of the district is located. The district shall keep the following records, which shall be open to public inspection:

(a) Minutes of all meetings of the district board;

(b) All resolutions;

(c) Accounts showing all moneys received and disbursed;

(d) The annual budget; and

(e) All other records required to be maintained by law.

(4) The district manager shall be the manager or equivalent of the city or county, the district treasurer shall be the treasurer of the city or county, the district clerk shall be the district clerk of the city or county, respectively, unless the district board engages an outside firm to perform the tasks of the district's manager, treasurer and clerk as well as other duties as may be prescribed by the district board. Where a district contains multiple county or city jurisdictions, the board shall designate by resolution the manager, treasurer and clerk.

(5) The district manager shall have charge and supervision of the daily operations of the district. The district manager may hire or otherwise employ and terminate the employment of such persons, including professional, supervisory and clerical employees, as may be necessary and authorized by the board.

(6) The treasurer of the district shall have such duties as the district board may prescribe, together with the duty to keep account with the district; to place to the credit of the district all moneys received by him or her from the collection of special assessments, taxes or from any other sources, and all other moneys belonging to the district, and to pay over all moneys belonging to the district on legally drawn warrants or orders of the district board.

(7) The clerk of the district shall have such duties as the district board may prescribe, together with the duty to conduct district elections and to prepare and distribute legal notices.

(8) The district shall be separate and apart from any county or city. The members of the district board, when serving in their official capacity as members of the district board, shall act on behalf of the district and not as members of a board of county commissioners or as members of a city council.

(9) The district board shall administer in a reasonable manner the implementation of the general plan.

(10) The district shall exist until dissolved pursuant to section 50-3116, Idaho Code.

History.
I.C., § 50-3104, as added by 2008, ch. 410, § 1, p. 1144; am. 2012, ch. 324, § 3, p. 884.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 324, added the last sentence in subsection (4).

50-3108. General obligation bonds — Election — Maximum indebtedness allowed — Levy. — (1) After district formation, whenever the district board shall deem it advisable to issue general obligation bonds of the district, the district board shall provide therefor by resolution, which resolution shall specify and set forth the community infrastructure and other costs and expenses approved by the district board consistent with the general plan to be financed with the bonds, and make provision for the collection of an annual tax sufficient to pay the interest on the bonds as it falls due, and also to constitute a sinking fund for the payment of the principal thereof as required by the constitution and laws of the state of Idaho.

(2) The resolution shall also provide for holding an election, held in compliance with section 50-3112, Idaho Code, to submit to the qualified electors of the district the question of authorizing the district to issue general obligation bonds of the district to provide money for said community infrastructure consistent with the general plan. The ballot used in such

election shall be in form substantially as follows: "In favor of issuing bonds to the amount of ..... dollars for the purpose stated in Resolution No. ...," and "Against issuing bonds to the amount of ..... dollars for the purpose stated in Resolution No. ...".

(3) If two-thirds (2/3) of the qualified electors at such election assent to the issuing of the bonds and the incurring of the indebtedness thereby created for the purpose aforesaid, the district board shall thereupon be authorized to issue and create such indebtedness in the manner and for the purposes specified in said resolution, and the bonds shall be issued and sold in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount without the further vote of the qualified electors, and to issue and sell such bonds at such times and in such amounts as the district board deems appropriate to carry out a community infrastructure project or projects in phases; provided however, that before any issuance of the bonds, including issuance in series or divisions and, in addition to such other determinations made by the district board as it may deem reasonable and prudent, the district board shall also determine whether reasonable financial assurance for the payment of the debt service on the bonds through additional collateral, payment guarantee or otherwise shall be required from a developer. The developer shall be consulted and shall be given a reasonable period of time within which to appear, either in person or in writing, and respond to any proposed financial assurance. If, following such developer's response, the district board determines that reasonable financial assurance shall be required, the district board shall specify the type and amount of the financial assurance required in its resolution.

(4) In no event shall the aggregate outstanding principal amount of general obligation bonds and any other indebtedness for which the full faith and credit of the district are pledged exceed nine percent (9%) of the actual or adjusted market value for assessment purposes on all taxable real property within the district as such valuation existed on December 31 of the previous year.

(5) After the bonds are issued, the district shall enter in its minutes a record of the bonds sold and their number and dates and shall periodically collect the pledged revenues to pay the debt service on the bonds when due.

(6) Bond proceeds received by the district shall be held in a segregated account and shall be disbursed therefrom only for:

(a) The payment of community infrastructure and/or community infrastructure segments approved by the district board and actually completed; or

(b) For the purpose of reimbursing actually paid expenditures relating to community infrastructure as approved by the district board; provided however, that lien releases with respect to the payment made must be obtained from the underlying providers of labor, work, services or materials as a condition to such payment; or

(c) For the payment or reimbursement of governmentally imposed impact fees as approved by the district board.

(7) Completion of community infrastructure may be phased and payment made pursuant to a draw schedule. Bond proceeds shall be expended on the community infrastructure within three (3) years after issuance. Prior to issuance of the bonds, the district board shall determine that such bond proceeds can reasonably be expended within that time.

(8) Each year, prior to the time for the certification required under section 50-3114, Idaho Code, the district board shall levy a tax upon all taxable real property within the district, sufficient, together with any money from the sources described in section 50-3107(3), Idaho Code, to pay debt service on the bonds when due. The levy shall be made by resolution entered upon the minutes of the district board, and it shall be the duty of the clerk of the district, immediately after entry of the resolution in the minutes, to transmit to the board of county commissioners in each county in which the district is located the certification required under section 50-3114, Idaho Code. Such tax levied shall then be collected and accounted for at the time and in the form and manner as other taxes are collected and accounted for under the laws of this state. Moneys derived from the levy of property taxes to pay the debt service on the bonds shall be kept separately from other funds of the district. A district's levy of property taxes shall constitute a lien on all taxable real property within the district.

(9) The district may issue and sell refunding bonds to refund general obligation bonds of the district authorized by this section. The principal amount of the refunding bonds may be more or less than the principal amount of the bonds being refunded, provided that the proceeds of the refunding bonds are used only for refunding purposes and payment of the costs thereof, and the total obligation of the district is not increased, that is, if the amount of the refunding bonds is more than the principal amount of the bonds being refunded, issuance of the refunding bonds will result in a net present value savings to the district. No election shall be required in connection with the issuance and sale of such refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History.
I.C., § 50-3108, as added by 2008, ch. 410, § 1, p. 1148; am. 2012, ch. 324, § 4, p. 884.

STATUTORY NOTES

Amendments.
The 2012 amendment, by ch. 324, substituted "nine percent (9%)" for "twelve percent (12%)" in subsection (4).

50-3109. Special assessments — Bonds. — (1) After district formation, upon the submission of a petition signed by no fewer than two-thirds (0.6667) of the owners of all the lands located in a proposed assessment area, the district board shall adopt a resolution ordering that a hearing be held to determine whether a special assessment should be imposed and special assessment bonds be issued to provide money for community infrastructure consistent with the general plan and the exercise by the district board of any of its powers under section 50-3105, Idaho Code.

(2) Notice of the hearing shall be posted in three (3) public places within the boundaries of the district not less than thirty (30) days before the hearing. Notice of the hearing shall also be published twice, the first time not less than twelve (12) days prior to the hearing and the second time not less than five (5) days prior to the hearing, in a newspaper of general circulation in each county or city in which the district is located. A copy of such notice shall also be mailed to each district resident and each owner of real property in the district if known or such owner's agent if known, addressed to such person at his or her post office address if known or, if unknown, to a post office in the county or city where the district is located. Ownership of real property shall be determined as of the date of the adoption of the resolution ordering the hearing. The notice shall include the following:

(a) A description of the real property to be included within the assessment area;

(b) A description of the method by which the amount of the proposed special assessment will be determined for each class of real property to which the special assessment is proposed to apply, in sufficient detail to enable the owner of the affected parcel to determine the amount of the special assessment;

(c) A description of the community infrastructure to be financed with special assessment bonds or revenues; and

(d) A statement that any person affected by the proposed special assessment may object in writing or in person at the hearing.

(3) If, after the hearing, the district board finds that it will be for the best interest of the district and the real property within the assessment area that the aggregate fair market value of the real property within the assessment area, including the value of the community infrastructure to be financed or paid for with the special assessments, and the infrastructure for which performance bonds or other financial assurances have been received, is at least three (3) times the aggregate principal amount of the special assessment bonds as determined by an MAI appraisal in form and substance acceptable to the district board, the district board shall adopt a resolution approving the imposition of the special assessment and, also by resolution, shall prepare a form of assessment roll numbering each assessment, giving the name, if known, of the owner of each lot or parcel of real property assessed, showing the amount chargeable to each such lot or parcel, and finding that each such lot or parcel is benefited to the amount of assessment imposed thereon. Such resolution shall be the final determination of the regularity, validity and correctness of the assessment roll, of each assessment contained therein, and of the amount thereof imposed on each such lot or parcel. Special assessments may be prepaid and permanently satisfied in whole or in part at any point in time. Prepayment of special assessments shall be paid in cash to the district in the following manner: (i) the interest on such portion to the next date special assessment bonds may be redeemed, plus (ii) the unpaid principal amount of such portion rounded up to the next highest multiple of one thousand dollars ($1,000), plus (iii) any premium due on such redemption date with respect to such portion, plus (iv) any

administrative or other fees charged by the district with respect thereto, less (v) the amount by which any reserve fund associated with the special assessment may be reduced on the redemption date as a result of such prepayment.

(4) Special assessment bonds approved at the hearing shall be issued in the manner provided by the laws of the state of Idaho, and the district board by further resolution shall be entitled to issue and sell the bonds in series or divisions up to the authorized amount without further hearing, and to issue and sell such bonds at such times and in such amounts as the district board deems appropriate to carry out a community infrastructure project or projects in phases. Bond proceeds shall be expended on the community infrastructure within three (3) years after issuance. Prior to issuance of the bonds, the district board shall determine that such bond proceeds can reasonably be expended within such time.

(5) After the bonds are issued, the district board shall enter in its minutes a record of the bonds sold and their numbers and dates and shall periodically collect the pledged revenues to pay the debt service on the bonds when due.

(6) Each year, prior to the time for the certification required under section 50-3114, Idaho Code, the district board shall impose a special assessment upon the real property within the assessment area of the district that will be subject to the special assessment sufficient, together with any moneys from the sources described in section 50-3107(3), Idaho Code, to pay debt service on the bonds when due, in addition to reasonable costs associated with the collection of the special assessment payments. The special assessment shall be made by resolution entered upon the minutes of the district board, and it shall be the duty of the clerk of the district, immediately after entry of the resolution in the minutes, to transmit to the board of county commissioners in each county in which the district is located, the certification required under section 50-3114, Idaho Code. Such special assessment shall then be collected and accounted for at the time and in the form and manner as property taxes are collected and accounted for under the laws of this state. Moneys derived from the imposition of the special assessment to pay the debt service on the bonds shall be kept separately from other moneys of the district.

(7) Special assessments against privately owned residential property shall be subject to the following provisions:

(a) The maximum amount of any special assessment that may be imposed shall not be increased over time by any amount exceeding two percent (2%) per year, up to a maximum of ten percent (10%);

(b) The special assessment shall be imposed for a specified time period, after which no further special assessment shall be imposed and collected; and

(c) Subject to the applicable laws of this state, nothing in this subsection shall preclude the establishment of different categories of residential property or changing the amount of the special assessment imposed upon a parcel whose size or use is changed. A change in the amount of a special assessment imposed upon a parcel due to a change in its size or use shall

not require notice and hearing, if the method for changing the amount of special assessment was approved at the hearing approving the special assessment and was described in sufficient detail to enable the owner of the affected parcel to determine how the change in size or use of the parcel would affect the amount of the special assessment.

(8) A district's imposition of a special assessment shall constitute a lien on the real property within the assessment area subject to the special assessment, including real property acquired by the state or its political subdivisions after the imposition of the special assessment, which shall be effective during the period in which the special assessment is imposed and shall have a priority coequal to the lien of real property taxes. A special assessment shall be subject to foreclosure by the district in the same manner as real property tax liens under the laws of this state, provided that a special assessment shall be subject to foreclosure at any time after thirty (30) days following written notice of delinquency to the owner of the real property to which the delinquency applies. The portion of proceeds of any foreclosure sale necessary to discharge the lien for the special assessment shall be deposited in the special bond fund for payment of any obligations secured thereby.

(9) No holder of special assessment bonds issued pursuant to this chapter may compel any exercise of the taxing power of the district, county or city to pay the bonds or the interest on the bonds. Special assessment bonds issued pursuant to this chapter are not a debt of the state of Idaho or any political subdivision thereof including the district, county or city, nor is the payment of special assessment bonds enforceable out of any moneys other than the revenue pledged to the payment of the bonds.

(10) Subject to the provisions of this section, a district may issue special assessment bonds at such times and in such amounts as the district deems appropriate to carry out a project or projects in phases, and payment may be made pursuant to a draw schedule.

(11) The district may issue and sell refunding bonds to refund any special assessment bonds of the district authorized in this chapter. The principal amount of the refunding bonds may be more or less than the principal amount of the bonds being refunded, provided the proceeds of the refunding bonds are used only for refunding purposes and payment of the costs thereof, and the total obligation of the district is not increased, that is, if the amount of the refunding bonds is more than the principal amount of the bonds being refunded, issuance of the refunding bonds will result in a net present value savings to the district. No election shall be required in connection with the issuance and sale of such refunding bonds. Refunding bonds issued pursuant to this section shall have a final maturity date no later than the final maturity date of the bonds being refunded.

History.

I.C., § 50-3109, as added by 2008, ch. 410, § 1, p. 1150; am. 2012, ch. 324, § 5, p. 884.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 324, in subsection (1), substituted "no fewer than two-thirds (0.6667) of the owners" for "all the owners" and deleted "or whenever the district board shall deem it advisable" preceding "the district board shall adopt".

50-3119. Appeal — Exclusive remedy — Conclusiveness. — Any person in interest who feels aggrieved by the final decision of a governing body or a district board in the formation or governing of a district, including, with respect to any tax levy, special assessment or bond, may, within sixty (60) days after such final decision, seek judicial review by filing a written notice of appeal with the clerk of the district and with the clerk of the district court for the judicial district in which a majority of the land area of the district is located. After said sixty (60) day period has run, no one shall have any cause or right of action to contest the legality, formality or regularity of said decision for any reason whatsoever and, thereafter, said decision shall be considered valid and uncontestable and the validity, legality and regularity of any such decision shall be conclusively presumed. With regard to the foregoing, if the question of validity of any bonds issued pursuant to this chapter is not raised on appeal as aforesaid, the authority to issue the bonds, the legality thereof and of the levies or assessments necessary to pay the same shall be conclusively presumed and no court shall thereafter have authority to inquire into such matters.

History.

I.C., § 50-3119, as added by 2008, ch. 410, § 1, p. 1160; am. 2012, ch. 324, § 6, p. 884.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 324, substituted "sixty days (60)" for "thirty days (30)" in the first and second sentences.

TITLE 51

NOTARIES PUBLIC AND COMMISSIONERS OF DEEDS

CHAPTER.
1. Idaho Notary Public Act, § 51-123.

CHAPTER 1

IDAHO NOTARY PUBLIC ACT

SECTION.
51-123. Transition. [Repealed.]

51-109. Forms for notarial acts.

JUDICIAL DECISIONS

Cited in: Parkwest Homes LLC v. Barnson, 149 Idaho 603, 238 P.3d 203 (2010).

51-118. Civil liability of notary public and employer.

JUDICIAL DECISIONS

Timeliness of Claim.

Chapter 7 trustee's adversary proceeding alleging that a notary public and the notary's employer were liable under this section for damages the notary caused when she notarized the forged signature of a debtor on a deed of trust was not time-barred, even though the trustee filed his adversary proceeding on March 25, 2009, more than three years after the notary notarized the debtor's signature. Subsection (4) of § 5-219 gave the debtor two years from the date he discovered the notary's misconduct to file a lawsuit. The debtor discovered the notary's conduct in May 2006, and declared bankruptcy on March 28, 2008. 11 U.S.C.S. § 108 extended the period the trustee had to file his adversary proceeding until March 28, 2010. Gugino v. Alliance Title & Escrow Corp. (In re Ganier), 2010 Bankr. LEXIS 1444 (Bankr. D. Idaho 2010).

51-123. Transition. [Repealed.]

Repealed by S.L. 2011, ch. 151, § 25, effective July 1, 2011.

History.

I.C., § 51-123, as added by 1984, ch. 259, § 2, p. 620.

TITLE 52

NUISANCES

CHAPTER 1

NUISANCES IN GENERAL

52-101. Nuisance defined.

JUDICIAL DECISIONS

Pleading Requirements.

Where the homeowner alleged that her home was flooded as the result of a road reconstruction project performed by the city, her complaint was not separated into multiple causes of action; the only theory of recovery identified was negligence; because the complaint failed to include a short and plain statement of her claim for nuisance under this section, the district court properly granted summary judgment for the city. Brown v. City of Pocatello, 148 Idaho 802, 229 P.3d 1164 (2010).

52-111. Actions for nuisance.

JUDICIAL DECISIONS

Applicability.

Summary judgment in favor of the bar on the resident's negligence claim was proper because the resident failed to provide sufficient evidence to establish that the bar owed a duty to the resident or created a public nuisance under this section. The assault on the resident occurred outside of the bar, was by an unknown assailant, and was not foreseeable. Jones v. Starnes, 150 Idaho 257, 245 P.3d 1009 (2011).

TITLE 53

PARTNERSHIP

CHAPTER 2

UNIFORM LIMITED PARTNERSHIP ACT

Part 1. General Provisions

53-2-108. Name. — (1) The name of a limited partnership may contain the name of any partner.

(2) The name of a limited partnership that is not a limited liability limited partnership must contain the phrase "limited partnership" or the abbreviation "L.P." or "LP" and may not contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P."

(3) The name of a limited liability limited partnership must contain the phrase "limited liability limited partnership" or the abbreviation "LLLP" or "L.L.L.P." and must not contain the abbreviation "L.P." or "LP."

(4) The name of a limited partnership may not contain language falsely stating or implying government affiliation.

(5) Unless authorized by subsection (6) of this section, the name of a limited partnership must be distinguishable in the records of the secretary of state from:

(a) The name of each person other than an individual incorporated, organized, or authorized to transact business in this state; and

(b) Each name reserved under section 53-2-109, Idaho Code, or other state law allowing the reservation or registration of business names.

(6) A limited partnership may apply to the secretary of state for authorization to use a name that does not comply with subsection (5) of this section. The secretary of state shall authorize use of the name applied for if, as to each conflicting name:

(a) The present user, registrant, or owner of the conflicting name consents in a signed record to the use and submits an undertaking in a form satisfactory to the secretary of state to change the conflicting name to a name that complies with subsection (5) of this section and is distinguishable in the records of the secretary of state from the name applied for;

(b) The applicant delivers to the secretary of state a certified copy of the final judgment of a court of competent jurisdiction establishing the applicant's right to use in this state the name applied for; or

(c) The applicant delivers to the secretary of state proof satisfactory to the secretary of state that the present user, registrant, or owner of the conflicting name:

(i) Has merged into the applicant;

(ii) Has been converted into the applicant; or

(iii) Has transferred substantially all of its assets, including the conflicting name, to the applicant.

(7) Subject to section 53-2-905, Idaho Code, this section applies to any foreign limited partnership transacting business in this state, having a certificate of authority to transact business in this state, or applying for a certificate of authority.

History.

I.C., § 53-2-108, as added by 2006, ch. 144, § 2, p. 407; am. 2012, ch. 184, § 2, p. 487.

STATUTORY NOTES

Amendments.

The 2012 amendment, by ch. 184, added subsection (4), renumbered the subsequent subsections, and updated the related internal references.

Effective Dates.

Section 2 of S.L. 2012, ch. 180 declared an emergency. Approved March 29, 2012.

CHAPTER 3

UNIFORM PARTNERSHIP ACT

Part 1. General Provisions

53-3-101. Definitions.

RESEARCH REFERENCES

Decisions Under Prior Law

Tenancy in Common.

Revised Uniform Partnership Act. 70 A.L.R.6th 209.

A.L.R. — Construction and application of

Part 2. Nature of Partnership

53-3-202. Formation of partnership.

JUDICIAL DECISIONS

Partnership Not Created.

There was no persuasive evidence that a construction loan created an implied partnership between the creditor and debtors under Idaho law. It was clear that the creditor merely loaned money to finance a single project; the creditor did not shown that debtors were fiduciaries, and thus his claim against them under 11 U.S.C.S. § 523(a)(4) failed with respect to the construction loan. King v. Lough (In re Lough), 422 B.R. 727 (Bankr. D. Idaho 2010).

PART 3. RELATIONS OF PARTNERS TO PERSONS DEALING WITH PARTNERSHIP

53-3-305. Partnership liable for partner's actionable conduct.

JUDICIAL DECISIONS

Applicability.

Partnership and partners were not liable to a buyer for conversion under Idaho's version of the Uniform Partnership Act because (1) the sale of cattle was between the buyer and the debtor, acting in his individual capacity; and (2) the mere fact that the debtor was also a partner in the partnership, or that he chose to deposit the check into an account which he used for the partnership's purposes was insufficient to render the partnership a party to the transaction, or to implicate the provisions of the Uniform Partnership Act. In re Morton, 2009 Bankr. LEXIS 1518 (Bankr. D. Idaho June 9, 2009).

PART 6. PARTNER'S DISSOCIATION

53-3-601. Events causing partner's dissociation.

JUDICIAL DECISIONS

No Express Provision.

From a general partner's attempt to dissociate from an LLP, the district court erred in ruling in favor of the LLP in the LLP's wrongful dissociation counterclaim under former § 53-338(2)(a)(2) as a provision of the partnership agreement was not an express provision limiting the right to dissociate rightfully. St. Alphonsus Diversified Care, Inc. v. MRI Assocs., LLP, 148 Idaho 479, 224 P.3d 1068 (2009).

53-3-602. Partner's power to dissociate — Wrongful dissociation.

JUDICIAL DECISIONS

No Express Provision.

From a general partner's attempt to dissociate from an LLP, the district court erred in ruling in favor of the LLP in the LLP's wrongful dissociation counterclaim under former § 53-338(2)(a)(2) as a provision of the partnership agreement was not an express provision limiting the right to dissociate rightfully. St. Alphonsus Diversified Care, Inc. v. MRI Assocs., LLP, 148 Idaho 479, 224 P.3d 1068 (2009).

CHAPTER 5

ASSUMED BUSINESS NAMES

53-502. Purpose.

JUDICIAL DECISIONS

Cited in: Ketterling v. Burger King Corp., 152 Idaho 555, 272 P.3d 527 (2012).

53-503. Definitions.

JUDICIAL DECISIONS

Formally organized or registered entity.

Where business owner failed to file as a foreign limited liability company and was, therefore, not a formally organized or regis-

tered entity and had filed no certificate of assumed business under § 53-504, § 53-509(1) did not operate to toll the statute of limitations in a slip and fall case, where plaintiff failed to exercise reasonable diligence in figuring out who to sue. Ketterling v. Burger King Corp., 152 Idaho 555, 272 P.3d 527 (2012).

53-504. Filing of certificate required.

JUDICIAL DECISIONS

Statutes of Limitation.

Where business owner failed to file as a foreign limited liability company and was, therefore, not a formally organized or registered entity and had filed no certificate of assumed business under this section, § 53-509(1) did not operate to toll the statute of limitations in a slip and fall case, where plaintiff failed to exercise reasonable diligence in figuring out who to sue. Ketterling v. Burger King Corp., 152 Idaho 555, 272 P.3d 527 (2012).

53-509. Consequences of noncompliance.

JUDICIAL DECISIONS

Applicability.

Where business owner failed to file as a foreign limited liability company and was, therefore, not a formally organized or registered entity and had filed no certificate of assumed business under § 53-504, subsection (1) did not operate to toll the statute of limitations in a slip and fall case, where plaintiff failed to exercise reasonable diligence in figuring out who to sue. Ketterling v. Burger King Corp., 152 Idaho 555, 272 P.3d 527 (2012).

CHAPTER 6

IDAHO LIMITED LIABILITY COMPANY ACT

SECTION.

53-601 — 53-672. [Repealed.]

Repealed by S.L. 2008, ch. 176, § 5, effective July 1, 2010. See present comparable provisions, § 30-6-101 et seq.